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THE HUMAN RIGHTS OF COMPANIES

EXPLORING THE STRUCTURE
OF ECHR PROTECTION

Marius Emberland

The Human Rights of Companies

Exploring the Structure of ECHR Protection

MARIUS EMBERLAND

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Le secret d'ennuyer est celui de tout dire
Voltaire

Preface

This is a study of the European Court of Human Rights' doctrinal response to complaints for protection under the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Human Rights Convention) (Rome, 4 November 1950; TS 71 (1953); cmd 8969) submitted by or on behalf of companies. Companies indisputably enjoy Convention protection in principle yet the protection of persons closely tied with for-profit and corporate business enterprise is sometimes doctrinally problematic. The book analyses the Court's reasoning in three groups of cases in which corporate human rights litigation has presented particular problems of treaty interpretation. The case law is streamlined in a minimalist fashion, which often obscures the Court's rationale. The book construes the structural framework within which the Court operates, and seeks to explain how the relevant case law is largely coherent when considered on these grounds. The Court's response is used for highlighting crucial aspects of the Convention system that are aptly revealed but which extend beyond the company context. These are the Convention as a European liberal project, a characteristic that makes it stand out from the bulk of international human rights law; the complex nature of the Convention's object and purpose, and, consequently, the Court's teleology; and finally, the collective and economic aspects of the Convention's civil and political rights. Ultimately I have wanted to show that human rights law can be a many-sided thing.

The book is based on my thesis submitted to the Faculty of Law at the University of Oxford for the degree of D.Phil. It is the result of three and a half years of work in Oxford, in New York, and in Oslo. A number of people and institutions deserves acknowledgement. In particular I wish to thank my supervisor, Professor Christopher McCrudden of Lincoln College. I have benefited from his brilliance and been encouraged by his geniality.

Thanks also to my first year assessors, Professor Paul Craig of St John's College and Professor Vaughan Lowe of All Souls College; to my examiners, Professor Colin Warbrick of Durham University and Dr Mads Andenæs, then Director of the British Institute of International and Comparative Law; and to Professor Peter Muchlinski of the University of Kent, the Press's reviewer. I am indebted to Sir Nicolas Bratza and Professors Lucius Caflisch and Matti Pellonpää, judges of the European Court of Human Rights, who found time to read parts of my thesis and discuss some problems with me

in Strasbourg in between their work at an overburdened Court. I also thank Associate Professor Jan E. Helgesen of the Norwegian Centre for Human Rights, University of Oslo; Professor Ola Mestad of the Centre for European Law at the University of Oslo; Professor Jørgen Aall of the University of Bergen; and Professor Francesca Klug of the Centre for the Study of Human Rights, London School of Economics. Professor Joseph H. H. Weiler of the New York University School of Law I thank for his general advice that good research is characterized less by finding answers and more by discovering new problems that need further studies. Dr Gwen Booth deserves a particular thank-you for her kind and properly demanding editorship at the Press.

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The work has largely been financed by the Research Council of Norway, but I have also benefited from stipends from the Otto Løvenskiold Foundation for my stay in Oxford; and Ruhrgas stipends from the Deutsch-Norwegisches Stipendienprogramm that enabled me to browse the impressive library holdings of the Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht in Heidelberg. I was very fortunate to work in the proximity of Professor Joseph H. H. Weiler as an Émile Noël Fellow at the Jean Monnet Center for Regional and International Law & Justice at the New York University School of Law in the academic year 2002/2003. I have been affiliated throughout with the Norwegian Centre for Human Rights at the Faculty of Law, University of Oslo, and therefore thank Directors Nils Butenschön and Geir Ulfstein for their institutional support. I have also been affiliated with the Centre for Socio-Legal Studies at the University of Oxford during my doctorate period.

Le secret d'ennuyer est celui de tout dire can roughly be translated thus: the best way to bore people is to tell them everything. It epitomizes my thesis approach in the sense that it has not been my intention to reveal all aspects of the status of companies' rights under the European Convention on Human Rights, but rather to focus on some problematic fields for the purpose of generating insight of the Convention as a whole.

Writing a doctoral thesis is a daunting experience. Since it also is fun, it inevitably distracts you from other aspects of life. Lill and Filip have constantly pulled me back to daily life and thereby kept me sane during the last three and a half years. It may be sentimental to say so, but nonetheless it is true. When all comes to all, nothing but them really matters.

The materials consulted have been updated as of 1 September 2005.

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List of Abbreviations

JOURNALS AND OTHER ACADEMIC PERIODICALS

AEL	Collected Courses of the Academy of European Law
AfP	Archiv für Presserecht
Am Bus L J	American Business Law Journal
Am J Comp L	American Journal of Comparative Law
AöR	Archiv des öffentlichen Rechts
Asian Ybk Intl L	Asian Yearbook of International Law
Austrian Rev Intl & Eur L	Austrian Review of International and European Law
BYIL	British Year Book of International Law
Cambridge Ybk Eur Leg Stud	Cambridge Yearbook of European Legal Studies
CDE	Cahiers de droit européen
CLJ	Cambridge Law Journal
Cornell Intl L J	Cornell International Law Journal
Cornell L Rev	Cornell Law Review
Delaware J Corp L	Delaware Journal of Corporate Law
DöV	Die öffentliche Verwaltung
EHRLR	European Human Rights Law Review
EJIL	European Journal of International Law
ELR	European Law Review
EuGRZ	Europäische Grundrechte-Zeitschrift
Eur Comp L Rev	European Competition Law Review
Eur J Intl Relations	European Journal of International Relations
Finnish Ybk Intl L	Finnish Yearbook of International Law
Ga L Rev	Georgia Law Review
Geo Wash L Rev	George Washington Law Review
German L J	German Law Journal
Hague Ybk Intl L	Hague Yearbook of International Law
Harv HRJ	Harvard Human Rights Journal
Harv L Rev	Harvard Law Review
Hastings L J	Hastings Law Journal
HRJ	Human Rights Journal
HRLJ	Human Rights Law Journal

HRLR	Human Rights Law Review
HRQ	Human Rights Quarterly
ICCLR	International Company and Commercial Law Review
ICLQ	International and Comparative Law Quarterly
ICSID Rev	ICSID Review
Intl Bus Lawyer	International Business Lawyer
ILM	International Legal Materials
IO	International Organization
Israel Ybk HR	Israel Yearbook on Human Rights
It Ybk Intl L	Italian Yearbook of International Law
JIEL	Journal of International Economic Law
JdT	Journal des Tribunaux: Droit européen
JMWP	Jean Monnet Working Paper
L & Contemp Probs	Law and Contemporary Problems
L & Phil	Law and Philosophy
LQR	Law Quarterly Review
Mich J Intl L	Michigan Journal of International Law
MLR	Modern Law Review
Notre Dame L Rev	Notre Dame Law Review
OJLS	Oxford Journal of Legal Studies
Phil Intl L J	Philippine International Law Journal
Phil & Pub Aff	Philosophy and Public Affairs
PL	Public Law
RDISDPS	Revue de droit international, de sciences diplomatiques, politiques, et sociales
RGDIP	Revue générale de droit international public
RZaiP	Rabels Zeitschrift für ausländisches und internationales Privatrecht
Recueil des Cours	Recueil de Cours de l'Académie de Droit International
S Ct Rev	Supreme Court Review
SMU L Rev	South Methodist University Law Review
Va L Rev	Virginia Law Review
VJIL	Virginia Journal of International Law