

ROUTLEDGE RESEARCH IN EU LAW

The Judge and the Proportionate Use of Discretion

A comparative study

Edited by
Sofia Ranchordás and
Boudewijn de Waard



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The Judge and the Proportionate Use of Discretion

The principle of proportionality plays a vital role in the judicial review of administrative decisions in most Western States. In restricting the discretionary powers of public bodies, and balancing relevant interests, proportionality promises a structured reasoning for the administration of law and the fair balancing of public and private interests.

Drawing together a selection of key experts in the field, this book analyses the principle of proportionality in the judicial review of administrative decisions. The principle of proportionality is first examined in the national contexts of Germany, France, England and the Netherlands in light of historical and recent developments in the literature and case-law. The book then moves to analyse the meaning of the proportionality principle in the specific case-law of the European Court of Justice and European Court of Human Rights, before finally examining the status of proportionality in the United States.

Taking a comparative perspective, the book asks whether judges consistently apply the same core elements of the principle of proportionality, whether case law of the European Court of Human Rights and the Court of Justice of the European Union influences national judges in the application of the proportionality test and whether it is possible to infer a global or European concept of the principle of proportionality.

As a work which takes a global view of the principle of proportionality in judicial review, this book will be of great interest to scholars of public and administrative law, comparative law and EU law.

Sofia Ranchordás is Assistant Professor of Administrative Law at Tilburg University.

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Acknowledgements

The idea to edit a volume on the principle of proportionality stemmed from the organisation of the 'International Seminar on Comparative and European Public Law', the result of a longstanding cooperation between scholars and students from the universities of Freiburg, Osnabrück, Tilburg, Oxford, Strasbourg and Orléans. This initiative allows a small group of students from the universities mentioned to attend a four-day seminar at one of the host institutions. With this seminar, we have tried to fill in the educational gap on comparative administrative law that most law schools have, discuss and share new developments in case law with foreign colleagues, and, above all, stimulate legal scholarship in the field of comparative law. Since a recurrent topic of the seminar mentioned has been the judicial review of discretionary powers by administrative courts, the choice of the topic for this edited volume seemed straightforward.

With this edited volume, the editors and contributors would like to share this discussion with readers, providing new and old insights on a known – but still blurry – topic: the principle of proportionality in comparative administrative law. This volume goes, however, beyond this longstanding European cooperation, expanding the scope of the topic to the New World and to authors outside the original network. In addition, this book aims to make a contribution to the legal scholarship on comparative administrative law.

This book and the underlying cooperation between the universities mentioned would not have been possible without the efforts of a number of scholars and institutions. We would like to thank, first of all, Prof Dr J. P. Schneider (Albert-Ludwigs University of Freiburg im Breisgau), who was at the forefront of the organisation of this seminar. Second, we would like to thank all the scholars who have taught in this seminar in the past nine years and their respective law schools who were willing to make this initiative financially possible. Our gratitude is also extended to all the students who, at the end of each edition of the seminar, were able to think critically about their national legal systems, telling us how much they had learned from other jurisdictions. If this is not the main educational purpose of comparative administrative law, then we would not know what else it is.

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Abbreviations

AB	AB Rechtspraak Bestuursrecht
ABRvS	Afdeling Bestuursrechtspraak Raad van State
AC	Law Reports, Appeal Cases
AJDA	L'Actualité Juridique du Droit Administratif
AJDI	L'Actualité Juridique Droit immobilier
APA	Administrative Procedure Act
ARB	Administratief-rechterlijke beslissingen
BVerfGE	Entscheidungen des Bundesverfassungsgerichts
CBb	College van Beroep voor het Bedrijfsleven
CLJ	Cambridge Law Journal
DA	Droit Administratif
ECHR	European Convention on Human Rights
ECJ	Court of Justice of the European Union
ECR	European Court Reports
ECtHR	European Court of Human Rights
EHRR	European Human Rights Reports
EPA	Environmental Protection Act
EU	European Union
EWCA	England and Wales Court of Appeal
GAJA	Grands Arrêts de la Jurisprudence Administrative
GALA	General Administrative Law Act
HL	House of Lords
HRA	Human Rights Act (UK)
I•CON	International Journal of Constitutional Law
JR	Jurist Reports
LPA	Les Petites Affiches
MLR	Modern Law Review
OJLS	Oxford Journal of Legal Studies
RFDA	Revue Française de Droit Administratif
RSC	Revue de Science Criminelle et de Droit Pénal Comparé
RTDE	Revue Trimestrielle de Droit Européen
RTDH	Revue Trimestrielle des Droits de l'Homme
TEU	Treaty on European Union
UKPC	United Kingdom Privy Council
WLR	Weekly Law Reports (UK)

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