

International human rights conventions and national courts

In the field of Human rights important steps have been made towards the strengthening and improving of the legal cooperation between countries: remarkable achievements have been obtained at the so-called regional level, where States share a common background of principles and ideals. Elements for progress in the field are the establishment of international institutions and the readiness of national courts to adopt binding common rules.

At the root of the political and institutional debate that has been developing in connection with the effects of the international rules on human rights, lays the concern that such rules might impose constraints to the sovereignty of individual countries. This seems especially true within the regional framework, where courts such as the European Court on Human Rights (ECHR Court) and the Inter-American Court have been set up, in order to decide on individual human rights infringements and to establish sanctions. In this respect, a crucial point that has been addressed especially by the Supreme courts of individual countries, is what place international rules have in the national legal order and which role do national Constitutions play in this context.

The international courts on human rights might also interfere in the supremacy of the national Member States' courts. However, the doctrine of the "supra-national" character of international human rights conventions which – as it has been suggested – could overrule national law, does not find support. National courts seem to base the settlement of disputes on the interpretation of relevant rules as applied by international courts, rather than on the recognition of the primary role of human rights conventions over the State's rules. In this way, compliance with international rules on the protection of fundamental rights is ensured, while avoiding the strains and tensions that an acknowledgment of supra-nationality would entail.

At European level, the institutions of the Council of Europe which

adopted the European Convention on Human Rights and those of the European Union (EU) both aim to ensure the protection of human rights. A major difference is that the rules of the ECHR are not recognized as having a direct effect in the legal orders of the Member States in the same way as this happens for the European Union rules. Besides, individuals have the power of recourse to the ECHR Court for the protection of fundamental rights, but cannot do so in relation to the EU Court of Justice.

The inclusion of human rights among the main principles of the EU, codified in the Charter of the fundamental rights, gives the way to relevant developments from the point of view of the impact and direct effects of the international rules in the EU States. It also requires a better coordination of the different legal systems in the field: in this respect it is hoped that significant achievements will be reached through the process of access of the EU to the ECHR, that has been officially recommended already at the end of the seventies, and put forward more convincingly soon after the Lisbon Treaty. One of the crucial points for the completion of this process is the adoption of rules on the way how the Luxembourg and the Strasbourg Courts shall co-ordinate their respective roles, in order to sanction also at the institutional level the present substantially homogeneity of approach in the interpretation and application of human rights.

These and other issues are the subject of this book, which is the first of a new series of publications by the RomaTre University Law Department on International Law, Private international law and European Union. The idea behind the book stems from the workshop organized by the University of RomaTre in March 2013, which was attended by Colleagues of RomaTre and by distinguished scholars from the Universities of Perugia, Regensburg and Tucumán, whose diverse academic backgrounds and differing approaches were a major contribution to the discussion on the interplay between regional and national courts and the impact of international institutions in the field of human rights.

This book has been a joint effort. I'm grateful to my Colleagues and to RomaTrE-Press who made its publication possible and looked after all the arrangements for its printing. A special thanks goes to Prof. Claudia Morviducci for her moral support and her valuable suggestions in the planning of the work, and to Dr. Luca Villani who helped me review and format the manuscript.

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As regards the quotations of the most recent case-law, the editorial board has decided to omit references to paper-collections, since the internet is the most widespread way to access cases of national courts (Corte Costituzionale: www.cortecostituzionale.it; Corte di Cassazione: www.cortedicassazione.it) and of the EU and ECHR courts (www.curia.europa.eu and, respectively, hudoc.echr.coe.int) by quoting the name of the parties and the number of the decision. For the less recent cases before the EU court reference is made to the official paper collection (quoted as Raccolta).

