

## Human Rights In Criminal Proceedings Collected Courses Of The Academy Of European Law Vol Xii 3

*This collection of cases and materials attempts for the first time to provide a compendium of the most important legal texts, relevant documents and cases, as well as explanatory commentary on the law of defence in international criminal proceedings by scholars and practitioners who have a wealth of relevant experience in the field. The book provides students in law school courses on international human rights law and ICL with the essential materials to understand the vital importance of an adequate defence in international criminal proceedings. Further, the text gives legal practitioners who may consider extending their field of practice to the international level a look at the diversity of the tasks they will encounter and prepare them for the legal culture shock inevitable at the international tribunals and courts.*

*Preface.*

*This book provides a comprehensive analysis of the presumption of innocence from both a practical and theoretical point of view. Throughout the book a framework for the presumption of innocence is developed. The book approaches the right to presumption of innocence from an international human rights perspective using specific examples drawn from international criminal law. The result is a framework for understanding the right that is grounded in human rights law. This framework can then be applied across different national and international systems. When applied, it can help determine when the presumption of innocence is being infringed upon, eroded, violated, and ensure that the presumption of innocence is protected. The book is an essential resource for students, academics and practitioners working in the areas of human rights, criminal law, international criminal law, and evidence. The themes also have a more general application to national jurisdictions and legal theory.*

*Although a number of serious crimes have been recognized and defined as international in nature most obviously genocide, war crimes, and crimes against humanity - no universal code of procedural law can be said to govern the conduct of international criminal trials. This important new books takes a giant step toward the development of such a code through an in-depth analysis of actual procedure before existing international and internationalized courts - the International Military Tribunal for Nuremberg and Tokyo (1945), the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Court (ICC), the Special Court for Sierra Leone (SCSL), and the East Timor Special Panels for Serious Crimes. The author also explores and clarifies the crucial role of human rights law, especially as it has evolved in the jurisprudence of the European Court of Human Rights (ECtHR), in the field of international criminal procedural law. Any professional, official, or academic concerned with ensuring the highest standards of international justice will find this book rewarding and useful. Practitioners and policymakers in any criminal justice system will appreciate the detailed practical evaluation and guidance provided here.*

*ECtHR and Criminal Proceedings*

*Judicial Dialogue on Human Rights*

*Prosecuting Human Rights Offences*

*Principles and Rules*

*Ensuring and Balancing Their Rights*

*Victims' Rights in Human Rights and International Criminal Law*

*In Prosecuting Human Rights Offences: Rethinking the Sword Function of Human Rights Law the author explores the features of the procedural obligation to investigate, prosecute and punish human rights offences, and explains how they determine the contemporary understanding of function of criminal prosecution.*

*This book considers the effectiveness and fairness of using international cooperation to obtain confession evidence or evidence of a suspect or accused person's silence across borders. This is a question of balance in limiting and protecting the right to silence. The functioning of the applicable law in Denmark, England and Wales and Australia is analysed in relation to investigative and trial measures such as police questioning, administrative questioning powers, covert surveillance and the use of silence as evidence of guilt. On the national level, this work examines the way in which domestic rules balance the right to silence in national criminal proceedings, and whether investigative and trial rules produce continuity throughout the criminal proceedings as a whole. From the transnational perspective, comparative legal analysis is used to determine whether the national continuity may be disrupted to such an extent that cooperation in the gathering of confession evidence causes unfairness. From the international perspective, this research compares the right to silence under the ICCPR and the ECHR to identify the overall effect of cooperating under particular human rights frameworks on the question of balance.*

*This book provides an in-depth examination of the judicial response at the international criminal tribunals (ICTs) to the violation of procedural standards in the pre-trial phase of proceedings. It does so against the backdrop of the assumption that certain particularities of international criminal proceedings may warrant a different approach to the matter than at the national level. By reference to relevant human rights standards and to national criminal procedure, as well as to theoretical accounts of the judicial response to pre-trial procedural violations, this book assesses the ICTs' law and practice in this regard, thereby identifying points of concern and making suggestions for improvement. In doing so, it considers the most suitable rationale for responding to procedural violations committed in the pre-trial phase of international criminal proceedings and the merits of judicial discretion in this context, as well as the impact of certain particularities of such proceedings on the determination of how to address procedural violations. The book is intended for academics and practitioners in the field of (international) criminal law who want to gain a deeper understanding of the possible impact of pre-trial procedural violations on criminal proceedings. Kelly Pitcher is Assistant Professor of Criminal Law and Criminal Procedure at Leiden University in The Netherlands.*

*This volume considers the way in which the focus on individual rights may constitute an obstacle to ensuring fairness in criminal proceedings. The increasingly cosmopolitan nature of criminal justice, forcing legal systems with different institutional forms and practices to interact with each other as they attempt to combat crime beyond national borders, has accentuated the need for systems to seek legitimacy beyond their domestic traditions. Fairness, expressed in terms of the right to a fair trial in provisions such as Article 6 of the European Convention on Human Rights, has emerged across Europe as the principal means of guaranteeing the legitimacy of criminal proceedings. The consequence of this is that criminal procedure doctrines are framed overwhelmingly in 'constitutional' terms - the protection of defence rights is necessary to restrict and legitimate the state's mandate to prosecute crime. Yet there are various problems with relying solely or predominantly on defence rights as a means of ensuring that proceedings are 'fair' or legitimate and these issues are rarely discussed in the academic literature. In this volume, scholars from the disciplines of law, philosophy and sociology challenge various normative assumptions underpinning our understanding of fairness in criminal proceedings.*

*International Criminal Law*

*Human Rights in European Criminal Law*

*Towards a Participatory Understanding of Criminal Justice in Europe and Latin America*

*Human rights and criminal procedure*

*Defense in International Criminal Proceedings*

*The Protection of Human Rights in African Criminal Proceedings*

*A. The parties' conduct*

*This volume considers a variety of key issues pertaining to the rights of defendants and victims at International Criminal Courts (ICTs) and explores how best to balance and enhance the rights of both in order to ensure the effectiveness and efficiency of international criminal proceedings. The rights of victims are becoming an increasingly important issue at ICTs. Yet, at the same time, this has to be achieved without having a detrimental impact upon the rights of the defence and the efficiency of the courts. This book provides analyses of issues on the rights of both the accused and the victims. By discussing matters concerning these two pivotal actors in international criminal justice within the same volume, the work highlights that there are intrinsic and intense conflicting and converging relationships between victims and the accused, particularly in terms of their rights. While most of the chapters focus mainly on either the accused or the victims, others discuss both at the same time. The work strikes a fine balance between, on the one hand, classic topics on the rights of the accused and the rights of the victims and, on the other, topics which have been largely unexplored and/or which require new angles or perspectives. Additionally, there are some chapters which approach both the rights of the accused and the rights of the victims in new contexts and/or under novel perspectives. The book as a whole provides a discussion of the two sides of this important coin of international criminal justice. The work will be an essential resource for academics, practitioners and students with an interest in the field of international criminal law. It will also be of interest to human rights scholars who are working with the rights of victims and the accused.*

*This book takes a procedural approach to human rights guarantees in international criminal proceedings and covers both the systems of the ad hoc Tribunals for the former Yugoslavia and Rwanda and the International Criminal Court. It analyses the rights conferred on individuals involved in international criminal trials from the commencement of investigations to the sentencing stage, as well as the procedural rights of victims and witnesses. The study focuses on problems which have emerged in three main areas: (i) length of proceedings; (ii) absence of specific sanctions and other remedies for violation of procedural rules; (iii) the need to strengthen the protection of the accused from undue interference with his rights (likely to be caused by a variety of factors, such as conflicting governmental interests, the presence of malicious witnesses, or inadequate legal assistance). Three general suggestions are made to reduce the impact of these weaknesses. First, it could be helpful to adopt specific sanctions for violation of procedural rules (such as, the exclusion of evidence as a remedy for violations of rules on discovery). Secondly, (as has already been provided for in the ICC Statute,) the Prosecutor of the ad hoc Tribunals should play a proactive role in the search for the truth by, among other things, gathering evidence that might exonerate the accused. Thirdly, the right of compensation for unlawful arrest (or detention) and unjust conviction, provided for in the ICC Statute, should be extended to other serious violations of fundamental rights and, in addition, should be laid down in the Statutes of the ICTY and ICTR.*

*Dealing with the protection of human rights in international criminal proceedings, this book's basic assumption is that human rights are the yardstick against which to measure the conformity of international criminal proceedings with the rule of law and fundamental principles of justice.*

*Judicial Responses to Pre-Trial Procedural Violations in International Criminal Proceedings*

*The International Dimension of Human Rights*

*The Length of Civil and Criminal Proceedings in the Case-law of the European Court of Human Rights*

*Avoiding a Full Criminal Trial*

*The case law of the European Court of Human Rights*

International Criminal Procedure: Principles and Rules is a comprehensive study of international criminal proceedings written by over forty leading experts in the field. The book offers a systematic overview and detailed comparison of the standards governing the conduct of proceedings in all major international and internationalized criminal courts from the Nuremberg and Tokyo Tribunals to the recently established Cambodian Extraordinary Chambers and the Special Tribunal for Lebanon. Based on a major research project, the study covers all procedural phases from the initiation of investigation to the appeals process. It pays special attention to the crosscutting themes which shape the contemporary discourse on international criminal justice, including the law of evidence, the defence issues, the procedural role of victims, and negotiated dismissal of international crime cases. The book not only takes stock of the procedural legacy of the UN ad hoc Tribunals for the former Yugoslavia and Rwanda and the International Criminal Court, but also reflects on the future directions of international criminal procedure. Investigating the tribunals' procedural law and practice through the prism of human rights law, domestic legal traditions, and tribunals' special objectives, the expert group puts forth proposals on how the challenges facing international criminal jurisdictions can best be met. International Criminal Procedure will be an indispensable work for practitioners involved in the adjudication of serious crimes on both national and international level, as well as international law students and academics.

This book analyses the rights of crime victims within a human rights paradigm, and describes the inconsistencies resulting from attempts to introduce the procedural rights of victims within a criminal justice system that views crime as a matter between the state and the offender, and not as one involving the victim. To remedy this problem, the book calls for abandoning the concept of crime as an infringement of a state's criminal laws and instead reinterpreting it as a violation of human rights. The state's right to punish the offender would then be replaced by the rights of victims to see those responsible for violating their human rights convicted and punished and by the rights of offenders to be treated as accountable agents.

New perspectives on human rights prosecutions in various regional contexts Human rights prosecutions are the most prominent mechanisms that victims demand to obtain accountability. Dealing with a legacy of gross human rights violations presents opportunities to enhance the right to justice and promote a more equal application of criminal law, a fundamental condition for a more substantive democracy in societies. This book seeks to analyse the impact, advances, and difficulties of prosecuting perpetrators of mass atrocities at national and international levels. What role does criminal justice play in redressing victims' wrongs, guaranteeing the non-repetition of mass atrocities, and attempting to overcome the damage caused by systematic human rights violations? This volume addresses critical issues in the field of human rights prosecution by drawing on the experiences of a variety of post-conflict and authoritarian countries covering three world regions. Contributing authors cover prosecutions in post-Nazi Germany, post-Communist Romania, and transnational legal complaints by victims of the Franco dictatorship, as well as domestic and third-country prosecutions for human rights violations in the pioneering South American countries of Argentina, Chile, Peru, and Uruguay, prosecutions in Darfur and Kenya, and the work of the International Criminal Court. The Impact of Human Rights Prosecutions offers insights into the difficulties human rights trials face in different contexts and regions, and also illustrates the development of these legal procedures over time. The volume will be of interest to human rights scholars as well as legal practitioners, participants, justice system actors, and policy makers.

Language and the Right to Fair Hearing in International Criminal Trials explores the influence of the dynamic factor of language on trial fairness in international criminal proceedings. By means of empirical research and jurisprudential analysis, this book explores the implications that conducting a trial in more than one language can have for the right to fair trial. It reveals that the language debate is as old as international criminal justice, but due to misrepresentation of the status of language fair trial rights in international law, the debate has not yielded concrete reforms. Language is the core foundation for justice. It is the means through which the rights of the accused are secured and exercised. Linguistic complexities such as misunderstandings, translation errors and cultural distance among participants in international criminal trials affect courtroom communication, the presentation and the perception of the evidence, hence jeopardizing the foundations of a fair trial. The author concludes that language fair trial rights are priority rights situated in the minimum guarantees of fair criminal trial; the obligation of the court to ensure fair trial or accord the accused person a fair hearing also includes the duty to ensure they can understand and be understood.

*A Guide for Application in Domestic Law*

*The Right to The Truth in International Law*

*A Comparative Analysis of National and International Criminal Procedural Systems and Human Rights Law*

*Human Rights in the Investigation and Prosecution of Crime*

*Obstacles to Fairness in Criminal Proceedings*

*International Criminal Procedure*

During the last 50 years interest in human rights has grown dramatically. Whilst newspapers focus mainly on dramatic issues: unlawful killing, torture, disappearances, or violations of freedom of speech; institutions charged with the implementation of human rights (as set out in international conventions and covenants) most frequently deal with allegations of human rights violations during criminal proceedings. The increasing internationalization of the administration of criminal law means that such cases are likely to become ever more important. In this book, the case-law of the international bodies dealing with such cases is presented and critically examined by an author who has contributed to its creation for almost a quarter of a century. The European Commission and European Court of Human Rights, in particular, have accumulated a considerable quantity of case-law, which is particularly interesting because it is intended to be valid in both Anglo-Saxon and Continental systems of criminal procedure. The law of the European Convention is emphasized because of its advanced procedures and the quality and quantity of its case-law. The book will be of interest to all scholars, practitioners, and students of international criminal law.

In modern societies, full criminal trials are avoided on many occasions. This book is concerned with mechanisms that either divert from or speed up the proceedings. Koen Vriend argues that the fair trial rights as established by the European Court of Human Rights under Article 6 ECHR provide a normative framework that does not only apply in a full criminal trial, but that it can also be used for diverted and shortened proceedings. He shows that the concept of fairness—as derived from ECtHR case law—is a fundamental principle that underlies all criminal law enforcement. It provides for the appropriate framework to assess whether diverted or shortened proceedings are fair and legitimate. The book is intended for criminal law scholars and practitioners and human rights scholars. Dr. Koen Vriend is a Lecturer of Criminal Law and Criminal Procedural Law at the University of Amsterdam.

Traditionally, human rights have protected those facing the sharp edge of the criminal justice system. But over time human rights law has become increasingly infused with duties to mobilise criminal law towards protection and redress for violation of rights. These developments give rise to a whole host of questions concerning the precise parameters of coercive human rights, the rationale(s) that underpin them, and their effects and implications for victims, perpetrators, domestic legal systems, and for the theory and practice of human rights and criminal justice. This collection addresses these questions with a focus on the rich jurisprudence of the European Court of Human Rights (ECtHR). The collection explores four interlocking themes surrounding the issue of coercive human rights: First, the key threads in the doctrine of the ECtHR on duties to mobilise the criminal law as a means of delivering human rights protection. Secondly, the factors that contribute to a readiness to demand coercive measures, including discrimination and vulnerability, and other key justificatory reasoning shaping the development of coercive human rights. Thirdly, the most pressing challenges for the ECtHR's coercive duties doctrine, including: - how it relates to theories and rationales of criminalisation and criminal punishment; - its implications for the fundamental tenets of human rights law itself; - its relationship to transitional justice objectives; and - how (far) it coheres with the imperative of effective protection for persons in precarious or vulnerable situations. Fourthly, the (prospective) evolution of the coercive human rights doctrine and its application within national jurisdictions.

Disclosure and the procedure regulating it represent a subject matter in which crime control and human rights find their synthesis. Disclosure is a complex subject that covers different branches of law as it involves aspects of a procedural nature as well as considerations that belong to the realm of human rights law. This work scrutinises and evaluates the regulation of disclosure in five criminal procedural systems in order to gain knowledge of the different ways in which the disclosure of information can be achieved. Three of these systems are national (England, Italy and France) and two international (ICTY and ICC). The jurisprudence of the ECtHR on the right to a fair trial and, more specifically, on the disclosure of information provides the background against which these systems and their disclosure processes can be assessed. At the end of this process, an attempt is made to suggest possible improvements for the current regulation of disclosure. In this context, particular attention is paid to modern international criminal proceedings.

*With Particular Reference to Criminal Proceedings*

*The Realisation of Human Rights*

*Fair Trial Rights, Diversions and Shortcuts in Dutch and International Criminal Proceedings*

*When Theory Meets Practice: Studies in Honour of Leo Zwaak*

*Transnational Inquiries and the Protection of Fundamental Rights in Criminal Proceedings*

*Protection of Human Rights in Criminal Justice Administration*

*The United Nations has established a right to the truth to be enjoyed by victims of gross violations of human rights. The origins of the right stem from the need to provide victims and relatives of the missing with a right to know what happened. It encompasses the verification and full public disclosure of the facts associated with the crimes from which they or their relatives suffered. The importance of the right to the truth is based on the belief that, by disclosing the truth, the suffering of victims is alleviated. This book analyses the emergence of this right, as a response to an understanding of the needs of victims, through to its development and application in two particular legal contexts: international human rights law and international criminal justice. The book examines in detail the application of the right through the case law and jurisprudence of international tribunals in the human rights and also the criminal justice context, as well as looking at its place in transitional justice. The theoretical foundations of the right to the truth are considered as well as the various objectives appropriate for different truth-seeking mechanisms. The book then goes on to discuss to what extent it can be understood, constructed and applied as a hard, legally enforceable right with correlating duties on various people and institutions including state agencies, prosecutors and judges.*

*This book deals with human rights in European criminal law after the Lisbon Treaty. Doubtless the Lisbon Treaty has constituted a milestone in the development of European criminal justice. Not only has the reform following the Treaty given binding force to the EU Charter of Fundamental Rights, but furthermore it has paved the way for unprecedented forms of supranational legislation. In this scenario, the enforcement of individual rights in criminal matters has become a core goal of EU legislation. Alongside these developments, new interactions between national and supranational jurisprudences have emerged, which have significantly contributed to a human rights-oriented approach to European criminal law. The book analyses the main developments of this complex phenomenon from an interdisciplinary perspective. Criminal and procedural law, constitutional law and comparative law must thus be combined to achieve a full understanding of these developments and of their impact on national law.*

*In The Rights of Victims in Criminal Justice Proceedings for Serious Human Rights Violations, Juan Carlos Ochoa offers a systematic analysis of international and comparative domestic law on the position of the victim in the prosecution of these infringements, points to the deficiencies of the current state of customary international law, and proposes specific reforms.*

*The protection of fundamental rights in the field of transnational criminal inquiries is of great delicateness in the current tangled web of domestic and international legal sources. Due to this complex scenario, this research has been carried out from a four-level perspective. The first part provides a critical analysis of the multilevel systems of protecting fundamental rights from the perspective of supranational and constitutional case law, and in the field of international and organized crime. The second part focuses on EU judicial cooperation in three main fields: financial and serious organized crime, mutual recognition tools, and individual rights protection. The third part provides the perspectives of ten domestic legal systems in two fields, i.e., obtaining evidence abroad and cooperation with international criminal tribunals. The fourth part analyses cross-border inquiries in comparative law, providing a reconstruction of different models of obtaining evidence overseas.*

*Defendants and Victims in International Criminal Justice*

*A Study in Memory of Vittorio Grevi and Giovanni Tranchina*

*Transnational Criminal Organizations and Transitional Justice*

*The Presumption of Innocence in International Human Rights and Criminal Law*

*Prosecuting Serious Human Rights Violations*

*Language and the Right to Fair Hearing in International Criminal Trials*

*Opening speech - Guy De Vel.*

The book presents a critical assessment on the use of human rights case law by international criminal tribunals. Based on the inadequacies highlighted though this analysis, the book propounds a coherent method to transfer human rights standards into international criminal justice.

Parties negotiating the end of authoritarian regimes or armed conflicts are almost inevitably left in a situation of legal uncertainty. Despite their overlapping scope of application, the differences between the approaches of International Criminal Law (ICL) and Transitional Justice (TJ) are so profound that, unless dogmatism is left aside and a process of dialogue is entered into, it will not be possible to harmonize the current legal regime of international crimes with the need to articulate transitional processes that are capable of effectively overcoming authoritarian regimes and armed conflicts. The serious material limitations shown by national, international and hybrid ICL enforcement mechanisms should be acknowledged and the goals pursued by ICL should be redefined accordingly. A minimum level of consensus on the scope of application, goals and elements of TJ should also be reached. Situations of systematic or large scale violence against the civilian population by transnational criminal organizations increase the challenge.

Resumen: 1. A Background for Article 6 - 2. Equality of Arms - 3. Equality of Arms and the Right to Challenge and Call Witness Evidence - 4. Equality of Arms and the Right to Adequate Time and Facilities.

Theory and Practice of International and Internationalized Criminal Proceedings

The Impact of Human Rights Prosecutions

The Impact of the European Convention on Human Rights on Criminal Proceedings in the European Union

The Concept of Equality of Arms in Criminal Proceedings Under Article 6 of the European Convention on Human Rights

Comparative Law Perspectives

Coercive Human Rights

*All EU Member States are party to the European Convention on Human Rights (ECHR), which is the principal treaty setting out the basic standards for suspects' procedural rights in criminal proceedings in the EU. However, divergent practices in different Member States have hitherto hindered mutual trust and confidence between them. In order to counter this obstacle, the European Commission - in its 2003 Green Paper on "Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the EU" - held that the EU is justified in taking action in this field. Member States had also expressed the need and wish for cooperation in the matter on a EU level. However, the ideas in the 2004 Commission "Proposal for a Council Framework Decision on Certain Procedural Rights in Criminal Proceedings throughout the European Union" have not yet sparked any political agreement on the matter. In 2005, the Commission arranged for a study to be carried out on procedural rights in the EU in order to comply with the The Hague Programme's call for studies on the existing levels of safeguards in the Member states. This book contains the results of an EU-wide research project (JLS/2008/D3/002). The authors have conducted this follow-up report to the 2005 study, providing up-to-date information on the level of procedural rights in the Member States as a lead for possible new Commission legal initiative on the matter and as a boost for the "Roadmap on Procedural Rights" presented by the 2009 Swedish EU Presidency. The main procedural rights studied - the right to information, the right to legal advice, the right to legal assistance (partially) free of charge, and the right to interpretation and translation - seem to be guaranteed by law, more or less, in accordance with the ECHR in the criminal justice systems of the EU. However, a more in-depth look at the implementation of these rights raises doubts as to whether, in all Member States, everyday practice is in line with the Strasbourg standard. This underlines the need for EU action, probably even beyond this presumed acquis. Particularly striking is the fact that fundamental rights, such as the right to remain silent, to have access to the file, and to call and/or examine witnesses or experts, even if deemed basic requirements for a fair trial, are not provided for in legislation in all EU Member States.*

*This book analyses current developments in Europe and Latin America towards the greater involvement of the parties in the administration of criminal justice. Focusing on both national criminal proceedings and transnational cases, this study employs a comparative law approach to examine the shift experienced by Italy and Brazil from the long tradition of mixed criminal justice to unprecedented adversarial trends. The identification of common needs and divergences from the national approach to criminal justice paves the way for a subsequent analysis of new solution models emerging from international human rights law and EU law.*

*To a great extent, these developments are due to the increasing impact of international human rights case-law on the criminal justice systems of the countries in question. The book concludes by proposing a set of qualitative requirements for a participatory model of criminal justice. This new book is partly based on an earlier book, Criminal Justice, Police Powers and Human Rights (Blackstone's, 2001), which was published immediately after the Human Rights Act came into force. The subsequent developments in the criminal justice/human rights field have been so numerous, that a new dedicated text on the subject is required as opposed to just a new edition of the authors' previous book. This new book provides a detailed and practical analysis of the impact of UK human rights law on the investigation and prosecution of crime. It deals systematically with the various stages of investigation, arrest and detention in police custody, court procedure, evidence, sentencing, and appeals. The narrative provides a comprehensive, in-depth examination of the Regulation of Investigatory Powers Act (RIPA), looking in detail at the relationship between human rights and police investigatory and surveillance powers. The book is aimed directly at practitioners, and is logically divided into chapters dealing with a particular aspect of human rights in relation to the criminal process, including; the interception of communications and surveillance and intelligence issues; arrest and detention; bail; disclosure; mental health and capacity; sentencing; the rights of victims; extradition; and proceeds of crime.*

*Human Rights in Criminal Proceedings*Oxford University Press, USA

*A Study of the Rights of the Accused in Indian and Soviet Legal Systems*

*The Practice of International Criminal Tribunals*

*Human Rights in International Criminal Proceedings*

*The Right to Silence in Transnational Criminal Proceedings*

*Positive Duties to Mobilise the Criminal Law under the ECHR*

*EU Procedural Rights in Criminal Proceedings*

A practical tool for legal professionals who wish to strengthen their skills in applying the European Convention on Human Rights and the case law of the European Court of Human Rights in their daily work This is the second and expanded edition of a handbook intended to assist judges, lawyers and prosecutors in taking account of the requirements of the European Convention) – and more particularly of the case law of the European Court of Human Rights – when interpreting and applying codes of criminal procedure and comparable or related legislation. It does so by providing extracts from key rulings of the European Court and the former European Commission of Human Rights that have determined applications complaining course of the investigation, prosecution and trial of alleged offences, as well as in the course of appellate and various other proceedings linked to the criminal process.

Human rights are not aspirational. Rather, they are meant to be realized. Since the adoption of the Universal Declaration of Human Rights, a growing number of treaties, declarations, resolutions, and other materials has been produced, and a wide array of international institutions have been created to monitor the implementation of human rights. Through these documents, the struggle to ensure the rights and freedoms of individuals is never an easy one. It requires the commitment of those who believe in the core nature of human rights. One such person has been Professor Leo Zwaak. The idea behind this festschrift is that, throughout Zwaak's professional life, he has dedicated himself to the realization of human rights. Whether through his research, his teaching, his work at the university or providing judicial trainings on the five continents, Leo Zwaak has impacted the world of human rights in many ways. As reflected in the book, Professor Zwaak's work has touched on a wide range of fields, spanning the universal, regional, and national levels. The book is organized into six parts: International Human Rights Law in General \* European Human Rights Law \* International Human Rights Law, International Criminal Law, and International Humanitarian Law \* International Human Rights Law, Extraordinary Rendition, and Forced Disappearances \* International and National Protection of Human Rights.

The International Dimension of Human Rights includes extracts of judgments, reports and opinions of international supervisory organs and domestic judicial tribunals, as well as the work of scholars in this subject. This casebook has been divided into seven chapters that deal with the following topics: basic notions of international law; the relationship between international law and human rights; the right to liberty and security of persons and the right not to be tortured; the right to a fair trial; economic, social and cultural rights; and other aspects of international protection of human rights, such as the rights of women, the rights of indigenous peoples and environmental rights. The casebook also includes the most relevant international treaties on human rights. Criminal punishment is increasingly regarded as a necessary element of human rights protection. There is a growing conviction at the international level that those responsible for the most serious crimes should not go unpunished. Though there is a wealth of legal writing on international criminal law, the question why and to what extent criminal prosecution is a necessary response to these crimes has not been comprehensively analysed. This book is the first to examine the duty to prosecute serious human rights violations. It does so by exploring the concepts of impunity and amnesties, and by exposing flaws in criminal proceedings. With its survey of the relevant human rights instruments and jurisprudence, Prosecuting Serious Human Rights Violations is placed at the forefront of the current debate. The book analyzes the rapidly growing body of human rights case law, dealing with criminalization, prosecution and punishment of serious human rights violations. It identifies and critically examines the standards for the conduct of criminal proceedings developed by the European and Inter-American Courts of Human Rights and the UN Human Rights Committee, providing a comprehensive analysis of the current state of the law. As the analysis reveals shortcomings in the current conceptualization of the prosecution of human rights violations, the author develops a solid theoretical framework for future jurisprudence. By evaluating the relationship between criminal law and the protection of human rights, the book elucidates not only the potential but also the limits of the current criminal justice. The underlying rationale for prosecuting serious human rights violations is also relevant for post-conflict situations, in which it is often argued that criminal punishment threatens peace and reconciliation. The question how to deal with post-conflict justice under international law is a continuing theme throughout the book.

New Developments in European Legislation and Case Law after the Lisbon Treaty

Rethinking the Sword Function of Human Rights Law

Justice for Victims of Crime

Individual Rights and Institutional Forms

International protection of human rights in criminal proceedings

Disclosure of Information in Criminal Proceedings