

Book Review

**Helen Keller & Alec Stone Sweet
(2008)**

***A Europe of Rights: The Impact of the
ECHR on National Legal Systems***

Oxford: Oxford University Press

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The European Convention on Human Rights (ECHR) is an example globally of the possibilities for the creation of a regional human rights body capable of enforcement. The European Court of Human Rights (ECtHR) is at the centre of the ECHR enforcement mechanism. However, it is currently in a situation of crisis, overwhelmed by applications with a backlog running into the tens of thousands. This has begun to result in a paralysis of the enforcement mechanism and highlights how the architecture of the ECtHR was not intended for the large number of individual applications that it is currently receiving. The controversial Protocol 14 intends to alleviate some of the pressure on the Court by altering the admissibility criteria. It is for individual Member States to fully implement the Convention into domestic law. As such, national courts should be the court of first instance in which the infringement of an individual's rights should be adjudicated. The Court was intended to adjudicate on interstate cases and on areas of contention within the Convention. It is important to understand how the ECHR has been adopted into national legal systems and what variables influence or prevent its enforcement in Member States. In identifying these variables it might become possible to find a means to alleviate the caseload of the Court and increase compliance by Member States with the Convention. This edited text by Keller and Stone Sweet offers the first rigorous and expansive comparative examination of this question.

The volume has nine substantive chapters, each analysing two states and their "reception of the ECHR". Reception is defined by Keller and Stone Sweet as "through what mechanisms national officials confront, make use of, and resist or give agency to the convention rights" (p. 4). In total, 18 Member States are examined with comparative chapters on the UK and Ireland and Russia and Ukraine, for example.

The methodology of the research takes the effectiveness of the ECHR in domestic law as the dependent variable and the ECtHR jurisprudence as the independent variable. The idea is that the Strasbourg Court's decisions put pressure on national officials to adopt and implement domestic legislation in conformity with the ECHR, whereas numerous factors contingent on individual state practice influence the reception of these decisions and constitute intermediate variables. By focusing on these intermediate variables, each chapter aims to examine their influence on the dependent variable of ECHR effectiveness. For consistency and for comparative necessity, each chapter of the edited volume examines the same questions.

The substantive chapters offer a dense and insightful examination of states' reactions to the ECHR. This includes an examination of states' participation in drafting, ratifying, applying and incorporating the Convention domestically. By examining these different aspects, each chapter looks at the historical expectations and practices that shaped states' willingness to incorporate the ECHR into domestic law. This can be seen in the chapter on the UK and Ireland in which the ECHR had the status of an international Convention in the UK. As such it had no immediate validity in UK law and individuals had to seek recourse at the ECtHR for any infringement of their rights. In Ireland, on the other hand, the Constitution had created a strong domestic constitutional rights tradition and little debate on the ECHR incorporation into domestic law occurred. This began to change with acceptance of EU legal supremacy in the UK and the 1998 Belfast agreement for Ireland.

The chapters only briefly examine media, scholarship and public education focusing primarily on judicial and legal practices. However, this results in a lack of analysis on cultural differences and understandings of the Convention's rights based on national contingent historical practices. The contention here is that there are broader social processes that affect the 'effectiveness' of the ECHR than simply the questions and analysis undertaken within this project. This said the chapters are rigorous, offering an unrivalled level of explanation. Perhaps the most significant contribution that this study can provide is possible remedies to the crisis currently faced by the ECtHR. The suggestion is firstly for increased burden-sharing in protecting and promoting human rights by the various committees and commissions of the Council of Europe (CoE). Alongside this would be the creation of CoE offices in states that have a high frequency of judgments against them in the ECtHR. These offices could advise applicants on admissibility criteria. Keller and Stone Sweet also suggest the increased role that domestic courts should exercise under Article 13 of the ECHR: alongside this is the proposition that national courts could be involved in determining reparations and just satisfaction. Finally is the suggestion of allowing the ECtHR to use rule 104 of the Rules of the Court to amend its own procedures. This would facilitate expediency in changing Court procedures rather than relying on ratification of additional protocols to the ECHR. Some of the suggestions are similar to the report by the 'Group of Wise Persons' on reforming the Court. One of the major hurdles is maintaining consistency in judgements and preventing regional differences in understandings of admissibility criteria and different levels of reparations if this was undertaken by national courts.

Keller and Stone Sweet offer a number of interesting interjections into the possibility of reforming the Court and strengthening human rights protection within Europe. This text offers an important contribution supported by a diligent and well-founded research methodology. This text should not simply be the preserve of lawyers and academics focusing on the ECHR, as it outlines the ability of an international regime to shape domestic law and politics. As such, a broader community involving regime theorists, European scholars and International Relations academics should examine more thoroughly this research. A well-rounded scholarly achievement - the only hope is that practitioners and policy makers take heed of its recommendations and solve the crisis at the ECtHR.
