

Preventing Irreparable Harm: Provisional Measures in International Human Rights Adjudication

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Stellingen behorende bij het proefschrift van E.R. Rieter, *Preventing irreparable harm, Provisional measures in international human rights adjudication*, Maastricht 12 maart 2010

1. Persuasive provisional measures are based on an underlying rationale that all tribunals have in common. At present this is ensuring survival and respect for personal integrity.
2. A provisional measure taken in a particular situation belongs to the common core of the concept 'provisional measure' when more than one tribunal has not just based itself on the currently applicable underlying rationale in its decisions on the merits, but has in fact used provisional measures in that situation.
3. Provisional measures are most persuasive when they intervene to halt human rights violations that, without this intervention, would not just be irreversible, but would in fact be irreparable.
4. In the specific context and mandate of a tribunal the use of provisional measures may also be appropriate to halt a human rights violation that would be irreversible, although not irreparable.
5. Provisional measures aimed at preventing human rights violations that cannot just be redressed by means of financial compensation, but in fact are reversible, fall beyond the outer limits of the concept 'provisional measure'.
6. Lacking motivation and accessibility, the provisional measures of the European Court of Human Rights are less persuasive than those of its Inter-American counterpart.
7. In the context of the general trend towards humanisation of international law human rights tribunals should not be overly timid in setting the example.
8. The interpretations by UN treaty bodies, in particular their decisions in the context of the right of individual complaint, can no longer simply be dismissed as not legally binding.
9. Decisions in the context of individual petitions or inter-state litigation can result in legal 'novum' at the domestic level not just when they originate from the European Court of Human Rights, but also from UN treaty bodies, with consequences for extraordinary national remedies such as revision.
10. When interpreting international obligations, Dutch courts should attach no importance to the intention of the Dutch government.
11. New age is old age both in its roots and in the aggression with which it is sometimes preached.
12. Empathy can never be a trick.