

Remedies for human rights violations by the European Union

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Summary of Doctoral Dissertation

REMEDIES FOR HUMAN RIGHTS VIOLATIONS BY THE EUROPEAN UNION

to be defended in public on Friday, June 4th 2021, at 12:00 hrs.

by Alexis E. Antoniadis
Maastricht University

This Thesis has as its core research question the availability of substantive remedies for individual applicants, relating to breaches of fundamental and human rights by EU institutions. The basis of the hypothesis is that the substantive remedies available to individuals for human rights violations by the European Union are limited and regularly ineffective, due to procedural obstacles.

This book will explore its subject in a tripartite structure. The objective of the first Part of this Thesis is to elaborate the initial hypothesis; that is that there is a significant deficit in the access to remedies for human rights violations that are committed by the EU. The first Chapter of Part I explores the problems that persist following the non-fulfilment of the EU's accession to the European Convention on Human Rights. Chapter 2 concerns a fundamental question of EU administrative law with extensive effect on the protection of human rights: the limited effectiveness of the procedure of judicial review within EU law. Chapter 3 examines legal alternatives that may function as mechanisms for the attainment of remedies for violations of human rights: the doctrine of direct effect, preliminary references, the plea of illegality and the establishment of specialist bodies that examine complaints for specialised organs of the EU.

In light of the deficit of remedies identified, other solutions may be sought for obtaining remedies for human rights violations. Consequently, Part II examines the remedy provided by the principle of non-contractual liability as embodied in Article 340(2) TFEU. Chapter 4 will delve into the relationship between non-contractual liability and human rights claims. Next, the criteria for the establishment of non-contractual liability will be examined vis-à-vis human rights cases. Those criteria are unlawfulness (Chapter 5) damage and causation (Chapter 6). This discussion will also include comparisons with national law and the jurisprudence of the ECtHR. Chapter 7 examines the function of the doctrine of non-contractual liability for lawful acts of the Union in human rights. Chapter 8 will assess the

material scope of application of the principle of non-contractual liability and how this relates to the remedy's effectiveness for human rights violations.

Part III goes a step beyond the EU's legal system. It aims to examine the possibility of obtaining remedies for violations of human rights by the EU in the sphere of international law, both as an alternative to the EU's legal system as well as potential additional protection. This part of the thesis will explore the external, international accountability of the Union in relation to human rights violations. Chapter 9 will analyse the significance of the EU's international legal personality and how this evolving international identity of the Union is in want of a set of obligations relating to the EU's action vis-à-vis human rights and a regime for the Union's responsibility on the international scene. Chapter 10 explores whether it is possible for the EU to breach any international human rights law obligation. Yet responsibility for such a breach would require attribution, which will be the subject matter of Chapter 11. Chapter 12 assesses the interaction between EU policies and their implementation by a Member State and international human rights law. Chapter 13 will explore the potential application of remedies for violations of international law by international organisations, on the European Union for human rights violations. Chapter 14 examines the practical question of procedure: the accountability of the EU before other international institutions in order to obtain a remedy for the human right violation.

The Conclusion will contain the findings of the core research question – as to the existence and effectiveness of a system of procedures and substantive remedies for the EU and its institutions in relation to human rights violations, along with the corresponding suggestions.