

Urgency and Human Rights

Eva Rieter · Karin Zwaan
Editors

Urgency and Human Rights

The Protective Potential and Legitimacy
of Interim Measures



ASSER PRESS



Springer

Editors

Eva Rieter
Centre for State and Law
Radboud University
Nijmegen, The Netherlands

Karin Zwaan
Centre for State and Law
Radboud University
Nijmegen, The Netherlands

ISBN 978-94-6265-414-3 ISBN 978-94-6265-415-0 (eBook)
<https://doi.org/10.1007/978-94-6265-415-0>

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl
Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

© T.M.C. ASSER PRESS and the authors 2021

No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work. The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

This T.M.C. ASSER PRESS imprint is published by the registered company Springer-Verlag GmbH, DE part of Springer Nature.
The registered company address is: Heidelberger Platz 3, 14197 Berlin, Germany

This book is dedicated to Prof. Theo C. van Boven whose incessant commitment to addressing urgent human rights cases continues to inspire.

Preface

This book aims to contribute to the ongoing discussion about how interim measures can be legitimate and well-functioning tools to address urgent human rights cases. Preventing irreparable harm in urgent situations requires a multifaceted approach by litigants, adjudicators and other official authorities at the international level. The book discusses urgency and human rights from the vantage point of various practitioners and scholars in international and regional adjudicatory systems. It does so with the aim of identifying how interim measures could be legitimate and protective and to single out obstacles to their implementation.

As the editors, we joined forces, first to organise an expert seminar on Urgency and Human Rights (29–30 May 2015), together with Rosa Möhrlein, and now to publish this book. Clara Burbano, Yves Haeck and Andrea Saccucci supported the venture. Several of the contributors to this book also took part in that seminar, with its call for papers. We thank Radboud University International Office, the Centre for State and Law of Radboud University and Ghent University Human Rights Centre for the funds provided, which enabled us to organise this seminar.

We very much appreciate the patience of the contributing authors throughout this project. They submitted (the new versions of) their chapters between Summer 2019 and the first half of 2020. We are now writing this preface in the awareness that worldwide crises, such as currently the COVID-19 pandemic and its impact on the enjoyment of human rights, only heighten the need to properly address urgent human rights situations. We see calls for urgent action from many quarters, including UN Special Rapporteurs. The question is what will be the role of international adjudicators. We already see interim measures requests specifically referring to COVID-19. The insights on judicial decision-making in urgent cases provided by the authors of the various chapters are directly relevant in this context. They show diverse perspectives on the protective potential and legitimacy of interim measures and other urgency mechanisms pending international proceedings.

We gratefully acknowledge the important support from Meryem Sayin and Lorin Derwish during the editorial process, with regard to the book as a whole, as well as the earlier input by Rosa Möhrlein and by Mary Dickson and Marc Veenbrink. We

also thank Jeske Jansen for preparing the book for publication. Furthermore, we thank Frank Bakker and Kiki van Gulp at Asser Press for their patience and trust in the project.

This book is dedicated to Theo van Boven, who has always shown his conviction that preventing and halting human rights violations and providing a substantive remedy for such violations are closely related. This is evident from his UN reports on the right to a remedy and reparation, his scholarly publications, his work as UN Special Rapporteur against Torture (including issuing urgent appeals) and earlier as the director of the human rights division in Geneva. It is also clear from the research projects he initiated, such as on interim measures and human rights. He was the thesis advisor for one of the editors and he gave one of the keynote speeches at the abovementioned expert seminar on urgency and human rights, where he actively engaged in critical discussion with the participants on their papers. He continues to be a motor for positive action.

Nijmegen, The Netherlands

Eva Rieter
Karin Zwaan

Contents

1	Introduction: Perspectives on the Protective Potential of Interim Measures in Human Rights Cases and the Legitimacy of Their Use	1
	Eva Rieter	
2	Urgency and Human Rights: The Necessary and Legitimate Role of Regional Human Rights Tribunals	17
	Dinah Shelton	
3	Urgency and Human Rights in EU Law: Procedures Before the Court of Justice of the EU	37
	Sacha Prechal and Aniel Pahladsingh	
4	The Politics of Interim Measures in International Human Rights Law	65
	Róisín Pillay	
5	Provisional Measures in the African Human Rights System: Lingerin Questions of Legitimacy	87
	Solomon T. Eboobrah	
6	The Legitimacy of Interim Measures from the Perspective of a State: The Example of Canada	115
	Joanna Harrington	
7	Urgency in Expulsion Cases Before the European Court of Human Rights and the UN-Committees: A Bird’s Eye View	135
	Karin Zwaan	
8	Irreparable Harm in the Ukraine Conflict: Protection Gaps and Interim Measures	161
	Brian Griffey	

9 Urgency at the European Court of Human Rights: New Directions and Future Prospects for the Interim Measures Mechanism? 197
Philip Leach

10 The Innovative Potential of Provisional Measures Resolutions for Detainee Rights in Latin America Through Dialogue Between the Inter-American Court and Other Courts 223
Clara Burbano Herrera and Yves Haeck

11 Conclusion: The Protective Potential and Legitimate Use of Interim Measures in Human Rights Cases 245
Eva Rieter

Table of Cases 299

Index 315

Contributors

Clara Burbano Herrera Faculty of Law & Criminology, Ghent University, Ghent, Belgium

Solomon T. Ebobrah Niger Delta University, Bayelsa State, Amassoama, Nigeria; Centre for Human Rights, University of Pretoria, Pretoria, South Africa; ICourts, Centre of Excellence for International Courts, University of Copenhagen, Copenhagen, Denmark

Brian Griffey Amnesty International, Washington, D.C., USA

Yves Haeck Faculty of Law & Criminology, Ghent University, Ghent, Belgium

Joanna Harrington Faculty of Law, University of Alberta, Edmonton, Canada

Philip Leach Law School, Middlesex University, The Burroughs, London, UK; European Human Rights Advocacy Centre (EHRAC), Middlesex University, The Burroughs, London, UK

Aniel Pahladsingh Raad van State [Council of State], The Hague, The Netherlands

Roísín Pillay Europe and Central Asia Programme, International Commission of Jurists (ICJ), Brussels, Belgium

Sacha Prechal Department of Law, Faculty of Law, Economics and Governance, Utrecht University, Utrecht, The Netherlands

Eva Rieter Centre for State and Law, Radboud University Nijmegen, Nijmegen, The Netherlands

Dinah Shelton George Washington University Law School, Washington, USA

Karin Zwaan Centre for State and Law, Department of Migration Law, Radboud University Nijmegen, Nijmegen, The Netherlands