

Contents

Acknowledgements XI

Acronyms and Abbreviations, Legal Citation Format XIII

- 1 Any Alleged Breach: The Inter-State Application under the ECHR 1
 - 1.1 Growing Relevance of the Inter-State Application under the ECHR 1
 - 1.2 Object and Purpose of the Inter-State Application 5
 - 1.3 Link to Current Debate Concerning the Role of the European Court of Human Rights 7
 - 1.4 Stream of Inquiry: Between Collective Enforcement and International Dispute Settlement 7
 - 1.4.1 *The Drafting Process and the Evolution of the Supervisory Framework of the ECHR* 8
 - 1.4.2 *Comparisons in Light of Leading Question* 8
 - 1.4.3 *Case Law: Documentation, Context and Functions* 9
 - 1.4.4 *Recommendations for Reform* 10
 - 1.5 Collective Enforcement and International Dispute Settlement 11
- 2 The Inception and Evolution of the Inter-State Application under the European Convention on Human Rights 13
 - 2.1 Overview: The Privilege of Hindsight 13
 - 2.1.1 *Filling the Academic Gap* 13
 - 2.1.2 *Methodological Considerations* 13
 - 2.1.3 *Descriptive Concern of the Chapter* 14
 - 2.2 International Human Rights on the Universal Level: Developments Without Specific Enforcement Structures 14
 - 2.3 The Regional Initiative: The Council of Europe and Its Idiosyncrasies 16
 - 2.3.1 *Human Rights: A Central Feature and the Need for Enforcement* 16
 - 2.3.2 *The Object and Purpose of the Convention: More Collective Enforcement than Individual Justice* 17
 - 2.4 Retracing the Notion of Collective and Enforcement 18
 - 2.4.1 *Introducing the Notion of Collective Enforcement* 19
 - 2.4.2 *Enforcement – A Point of Contention* 19
 - 2.5 The 1950 Convention Revisited 20

2.5.1	<i>Amenable to Judicial Enforcement: The Substantive Guarantees of the ECHR</i>	20
2.5.2	<i>The Architecture of Supervision: A Complex Compromise</i>	21
2.5.3	<i>Supervision à la Carte</i>	23
2.5.4	<i>Evaluation of the 1950 Convention's Supervisory Structure</i>	25
2.6	<i>Towards Judicial Supervision: Subsequent Amendments of the Convention</i>	27
2.7	<i>Results: The Inter-State Application between Collective Enforcement and International Dispute Settlement</i>	28
3	International Dispute Settlement and Collective Enforcement Functions of the Inter-State Application Approached Through Comparison	30
3.1	<i>Inter-State Litigation in Strasbourg and The Hague – A Comparison with a View to the Function of International Dispute Settlement</i>	31
3.1.1	<i>Overview</i>	31
3.1.2	<i>Jurisdiction Compared</i>	35
3.1.3	<i>The Respective Yardsticks and the Cinderella Problem</i>	44
3.1.4	<i>Interim Result: Dispute Settlement Functions in Light of the Object and Purpose of the Inter-State Application?</i>	45
3.2	<i>The Inter-State and the Individual Application under the European Convention on Human Rights – A Comparison with a View to the Function of Collective Enforcement</i>	46
3.2.1	<i>Overview</i>	46
3.2.2	<i>Applicable Rules of Admissibility in Individual and Inter-State Cases</i>	49
3.2.3	<i>Standing</i>	51
3.2.4	<i>The Requirement of the Exhaustion of Domestic Remedies</i>	53
3.2.5	<i>Interim Results: Collective Enforcement Functions as Added Value of the Inter-State Application Within ECHR Supervisory Framework</i>	59
3.3	<i>Results: The Inter-State Application between International Dispute Settlement and Collective Enforcement</i>	61
3.3.1	<i>Dispute Settlement Functions, Jurisdiction and Yardstick</i>	61
3.3.2	<i>Collective Enforcement: Added Value of the Inter-State Application</i>	62

4	The Inter-State Case-Law under the European Convention on Human Rights: Approaching the Object and Purpose of the Inter-State Application in Practice	63
4.1	Collective Enforcement Functions	63
4.1.1	<i>Collective Enforcement beyond Individual Justice</i>	63
4.1.2	<i>Public Interest Litigation</i>	64
4.1.3	<i>Enforcement in the Specific Inter-State Context</i>	64
4.1.4	<i>More than Diplomatic Protection</i>	65
4.2	Dispute Settlement Functions	65
4.2.1	<i>Judicial Review in Times of Crises: Proportionality and the Role of the Court in the Context of Inter-State Applications</i>	65
4.2.2	<i>Private Interest Litigation</i>	66
4.2.3	<i>Fact-Finding, Adversarial, Inquisitorial, Cooperative</i>	66
4.3	Carving Out the Potential and the Need for Reform of the Inter-State Application	66
4.4	Greece v United Kingdom (1956–59)	67
4.4.1	<i>Overview</i>	67
4.4.2	<i>Documentation</i>	68
4.4.3	<i>Collective Enforcement Functions</i>	71
4.4.4	<i>Dispute Settlement Functions</i>	73
4.4.5	<i>Evaluation: Incident Collective Enforcement, but Mainly Settling the Status of Cyprus</i>	76
4.5	Austria v Italy (1960–1963)	77
4.5.1	<i>Overview and Documentation</i>	78
4.5.2	<i>Context: The Situation of the German-Speaking Minority in Italy</i>	79
4.5.3	<i>Collective Enforcement Functions</i>	79
4.5.4	<i>International Dispute Settlement Functions</i>	81
4.5.5	<i>Evaluation: Strasbourg as a Forum for Kin-State Litigation</i>	82
4.6	Denmark et al. v Greece (1967–1976)	83
4.6.1	<i>Overview</i>	83
4.6.2	<i>Documentation</i>	84
4.6.3	<i>Context: Greece Falling Prey to a coup d'état</i>	87
4.6.4	<i>Collective Enforcement Functions</i>	88
4.6.5	<i>Dispute Settlement Functions</i>	91
4.6.6	<i>Evaluation: Collective Enforcement Tested by Reality</i>	95
4.7	Ireland v United Kingdom (1971–1978 and 2014–Present)	97
4.7.1	<i>Overview and Documentation</i>	98
4.7.2	<i>Context: A Protracted, Multy-Layered Conflict</i>	101

4.7.3	<i>Collective Enforcement Functions</i>	102
4.7.4	<i>Dispute Settlement Functions</i>	107
4.7.5	<i>Evaluation: A Preponderance of Collective Enforcement Functions</i>	111
4.8	<i>Cyprus v Turkey (1974–Present)</i>	113
4.8.1	<i>Overview</i>	113
4.8.2	<i>Context: Cyprus as Object of Greek and Turkish Interests</i>	116
4.8.3	<i>Collective Enforcement Functions</i>	119
4.8.4	<i>Dispute Settlement Functions</i>	125
4.8.5	<i>Evaluation: Neither Collective Enforcement nor Dispute Settlement: Learning from Past Mistakes</i>	128
4.9	<i>Denmark et al. v Turkey (1982–1985) and Denmark v Turkey (1997–2000)</i>	130
4.9.1	<i>Overview and Documentation</i>	130
4.9.2	<i>Context: A Coup d'état and Its Long-Term Consequences</i>	133
4.9.3	<i>Collective Enforcement Functions</i>	135
4.9.4	<i>International Dispute Settlement Functions</i>	136
4.9.5	<i>Evaluation: Friendly Settlements: Efficient for the Collective Enforcement of Human Rights, but Not Universal Remedies</i>	138
4.10	<i>Georgia v Russia (2008–Present)</i>	139
4.10.1	<i>Overview and Documentation</i>	140
4.10.2	<i>Context: The Frozen and Not so Frozen Conflicts in the Aftermath of the Breakup of the Soviet Union</i>	143
4.10.3	<i>Collective Enforcement Functions</i>	145
4.10.4	<i>Dispute Settlement Functions</i>	148
4.10.5	<i>Evaluation: Strasbourg as Appropriate Forum for the Settlement of a Complex Conflict?</i>	151
4.11	<i>Ukraine v Russia (2014–Present)</i>	151
4.11.1	<i>Overview and Documentation</i>	152
4.11.2	<i>Context: Competing Interests Over Ukraine – East vs West Reloaded</i>	154
4.11.3	<i>Collective Enforcement Functions: Focus on Interim Measures</i>	156
4.11.4	<i>Dispute Settlement Functions in View of Ukrainian Multi-Forum Litigation Strategy</i>	157
4.11.5	<i>Evaluation: Open Questions about the Role of the Strasbourg Court</i>	159
4.12	<i>Results from the Analysis of Inter-State Case Law</i>	160
4.12.1	<i>Collective Enforcement Functions</i>	160
4.12.2	<i>Dispute Settlement Functions</i>	167

4.12.3	<i>Grouping of Inter-State Case Law: Private and Public Interest Litigation</i>	168
4.12.4	<i>Between Collective Enforcement and International Dispute Settlement</i>	169
5	Reform Considerations: The Inter-State Application between Collective Enforcement and Dispute Settlement	171
5.1	General Reform Considerations for the Inter-State Application	171
5.2	Spelling Out the Object and Purpose of the Inter-State Application	173
5.3	Dispute Settlement Functions	174
5.3.1	<i>No Broader Yardstick and No Counterclaims</i>	174
5.3.2	<i>Broadening the Court's Advisory Jurisdiction under Article 47 ECHR</i>	178
5.3.3	<i>Fact-Finding</i>	181
5.4	Collective Enforcement	186
5.4.1	<i>The Accession of the European Union to the ECHR and the Looming Admissibility Restrictions for the Inter-State Application</i>	186
5.4.2	<i>The Exhaustion of Domestic Remedies and the Exceptions</i>	191
5.4.3	<i>The Court's Remedial Toolbox in Light of the Object and Purpose of the Inter-State Application</i>	192
5.5	Cross-Cutting: Relationship of Individual and Inter-State Applications	208
	Appendix	211
	Index of Authorities	226
	Index	277