

EUROPEAN HUMAN RIGHTS JUSTICE AND PRIVATISATION

With the decline of public funding and new strategies pursued by interest groups, foreign private foundations and donors have become growing contributors to the European human rights justice system. These groups have created their own litigation teams, have increasingly funded NGOs litigating the European Courts, and have contributed to the content and supervision of European judgments, all of which has had direct effects on the growth and procedure of human rights. *European Human Rights Justice and Privatisation* analyses the impacts of this private influence and its effects on international relations between states, including the orientation of European jurisprudence towards Eastern countries and the promotion of private and neoliberal interests. This book looks at the direct and indirect threat posed by this private influence to the independence of European justice and to the protection of human rights in Europe.

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The Growing Influence of Foreign Private Funds

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CONTENTS

List of Tables ix
Foreword by x
LISA MCINTOSH SUNDSTROM
Acknowledgments xii
Introduction 1

PART I The Procedural Aspect of the Growing Influence of Private Foundations on the European Human Rights Justice System 7

1 The Increasing Influence of Private Foundations in the Realm of Justice 9

1.1 The Rise of Interest Groups and Foreign Private Foundations in Justice 9
1.2 The Impacts of Foreign Private Funds on National Courts: US and Irish Justice 14
1.3 Why Could the European Courts Be Targeted by Private Donors? 15
1.3.1 The Increasing Power of the European Court of Human Rights and the Court of Justice of the European Union 16
1.3.2 The Increasing Role of NGOs in Litigation and Third Party Intervention 29
1.3.3 The Role of the Economic Crisis of 2007 and the Crucial Need for Litigation Funding 30

2 The Creeping Private Influence on the Inputs of the ECtHR and the CJEU 33

2.1 The Creation and Development of a Litigation Team by the OSF 33
2.2 The Private-Sector Funding of Applications Taken by NGOs to the ECtHR and the CJEU 36
2.2.1 The Funding of NGOs by Private Foundations for Their Litigation Activities 37
2.2.2 The Role Played by the Main Private Donors 61
2.3 The Co-funding of NGOs and Private Organisations by Some CoE Member States 65

- 3 **The Influence of Private Foundations on the Outputs of the ECtHR and the CJEU** 66
 - 3.1 Judicial Results Obtained by Private Foundations and NGOs Financed by Them 67
 - 3.1.1 Pilot Judgments 68
 - 3.1.2 Judgments Obtained under Article 46 and Imposing General Measures on Condemned Member States 76
 - 3.1.3 Other Landmark Judgments 102
 - 3.2 Documents and Reports by NGOs and Private Foundations as Evidence Applied by the ECtHR and the CJEU 136
 - 3.3 The Increased Involvement of Private Foundations and NGOs in the Monitoring of the Execution of Human Rights Judgments by Member States 140
- 4 **The Growing Influence Exerted by the Private Sector on the Reform and Structure of the ECtHR and the CJEU** 144
 - 4.1 Contribution of Private Foundations and NGOs to Redesign and Reform of the ECtHR through Advocacy 144
 - 4.1.1 Reform of the ECtHR, the Process of Execution of Judgments and Claims for an Increase in the ECtHR Budget 144
 - 4.1.2 NGO Influence on the Rules of the ECtHR on the Treatment of Classified Documents 155
 - 4.1.3 Research Conducted by NGOs and Private Foundations on the ECtHR's Pilot Judgments Procedure and Fact-Finding Processes 156
 - 4.2 Private Influence on Nominations of European Judges 158
 - 4.3 A Broader Approach to Third Party Interventions Submitted by Private Foundations and NGOs 162
 - 4.4 The Introduction of Private-Sector Management Techniques at the ECtHR and the CJEU Favours NGOs and Private Foundations 163
- PART II The Substantive Dimension of the Growing Influence of Private Foundations on European Human Rights Justice** 171
- 5 **Effects of the Growing Influence of Private Interests on the Orientation of European Case Law** 173
 - 5.1 Orientation of Litigation towards Specific Policy Areas 173
 - 5.2 Litigation against Specific Countries: Eastern Europe and Russia 175
 - 5.2.1 Structural Flows of the Constitutional Systems of Eastern Countries and Their Domestic Remedies 179

CONTENTS

vii

5.2.2	The Difference that Private Foundations and NGOs Make Concerning the Overrepresentation of Eastern Countries	182
5.3	Reduced Protection of Human Rights in Certain Countries and Policy Areas: Countries and Cases Ignored by NGOs and Private Foundations	187
5.3.1	Countries Ignored by Private Litigation	188
5.3.2	Cases and Issues Neglected by Private Foundations: Absence of Real European Judicial Control over Austerity Policies and Their Effects	189
6	Effects of Private Litigation on Domestic Policies and International Relations: The Rise of Tensions between the EU, the US and Eastern Countries	200
6.1	How ECtHR Judgments Transform National Policies, Are Politicised and Expose Nationalist Regimes in Eastern Countries	200
6.1.1	The Ananyev, Neshkov and Varga Cases: Bulgaria, Hungary and Russia as 'Garrison States'	201
6.1.2	The Catan Case: Russia as an 'Aggressive, Authoritarian and Nationalist' State that Oppresses Minorities	205
6.1.3	The Khashiyev and Akayeva and Tagayeva Cases: Russia as a 'Terrorist and Violent State'	208
6.1.4	Russia and Azerbaijan as 'Oppressive and Corruptive States that Do Not Allow Political Opposition'	212
6.1.5	The Al Nashiri and Abu Zaybah Cases: Poland and Romania as 'Secret States Running Illegal Counterterrorist Operations'	215
6.1.6	The Horváth and Kiss and D. H. Judgments: Hungary and the Czech Republic as 'Racist States'	216
6.2	The Eastern and Russian Reactions to European Judicial Condemnations	221
6.2.1	Bans on Foreign Private Foundations and NGOs in Russia, Hungary and Azerbaijan and Control over NGOs in Poland	221
6.2.2	New Powers Given to the Russian Supreme Court	228
6.3	The Rise of Political Tensions between Russia and the EU Backed by the US	231
6.4	Towards a New Cold War?	236
7	The Relationships between Litigation Funded by Private Foundations and the Economic and Political Interests They Pursue	241
7.1	The Fight against Nationalism as Part of the Promotion of Borderless Neoliberalism and Free Trade	241

7.1.1	The Identity and Profile of Board Members of Private Foundations: Businessmen, Not Philanthropists	242
7.1.2	Litigation Impacts in Terms of Economy and Market: Making Business in a More Discreet Way through Policy and Regime Change	251
7.2	How and Why Private Foundations Promote Cultural Liberalism and Globalism	256
7.3	The Interests of Certain CoE Member States	258
	Conclusion: Towards a Privatised Capture of Human Rights?	260
	<i>Select Bibliography</i>	264
	<i>Index of Authors</i>	277
	<i>General Index</i>	281

TABLES

2.1 Main private foundations, NGOs and their funding 62
5.1 NGOs and their litigation activities, 2000–2018 177
5.2 Total number of applications per country, 1959–2017 178
5.3 Numbers of ECtHR judgments and ECHR violations by Russia (1998–2017) and by
main CoE member states (1959–2017) 179

FOREWORD

LISA MCINTOSH SUNDSTROM
*ASSOCIATE PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF
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Private charitable foundations – such as the Open Society, Ford, MacArthur, and Oak Foundations – generously provide funding to NGOs around the world to support their efforts to litigate violations of human rights in international courts. So what is wrong with that? In this book, Gaëtan Cliquennois provides a thought-provoking answer. In doing so, he makes a significant contribution to literatures on international courts, legal mobilisation, privatisation of state functions, and the politics of NGOs and their funding sources. As such, this book is at the cutting edge of questions to which new scholars of litigation in international courts are turning.

Focusing on two major European regional courts, the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), Cliquennois deftly links the efforts of private foundations to encourage litigation by NGOs against European states in these courts to the neoliberal agendas of private foundation leaders. He draws together a number of patterns that some other authors have observed: the classic observation that better resourced litigants with repetitive experience before a court hold considerable advantage in winning victories in them; the disproportionate focus of foundations and these courts on particular kinds of human rights violations, especially in the Eastern portion of the European Union and the Council of Europe; and recent reforms at the ECtHR and CJEU that filter and reduce the number of cases that make it to the stage of admissibility.

By adding a novel focus on the involvement of private foundations in particular, Cliquennois reveals the roles of private foundations in influencing the activities of those individual activists and NGOs that litigate at the ECtHR and CJEU. In addition, he tracks how private foundations ‘capture’ these courts internally in other respects: for instance, through ‘revolving door’ relationships between judges appointed to the ECtHR after working for NGOs funded by private foundations or for the foundations themselves; and through the courts’ reliance on information from

foundation-funded NGOs as case evidence and their roles in monitoring post-judgment implementation.

For those who would ask my initial question – what could be wrong with private foundations supporting the human rights work of activists where violations are occurring? – Cliquennois points out how foundations have exhibited considerable emphases and blind spots in their support. He documents how they have generally ignored certain types of rights violations, such as socio-economic rights and inequalities caused by government economic austerity programmes. He argues that this could be explained by the economic interests of foundation benefactors and founders themselves. Moreover, according to Cliquennois, the emphases of private foundations represent an effort to stigmatise the governments of certain Eastern European countries and Russia, branding them as dangerously authoritarian and nationalist. Their goal is to dismantle nationalist regimes in order to smooth the way for a neoliberal global economy where borders are not barriers to economic exchange.

The argument is extremely provocative and will inspire more research by scholars who follow in his footsteps. Most valuably, Cliquennois cautions us that we must not allow our normative goals of advancing human rights to blind us to the instrumental goals of particular actors who are supporting international human rights advocacy.

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