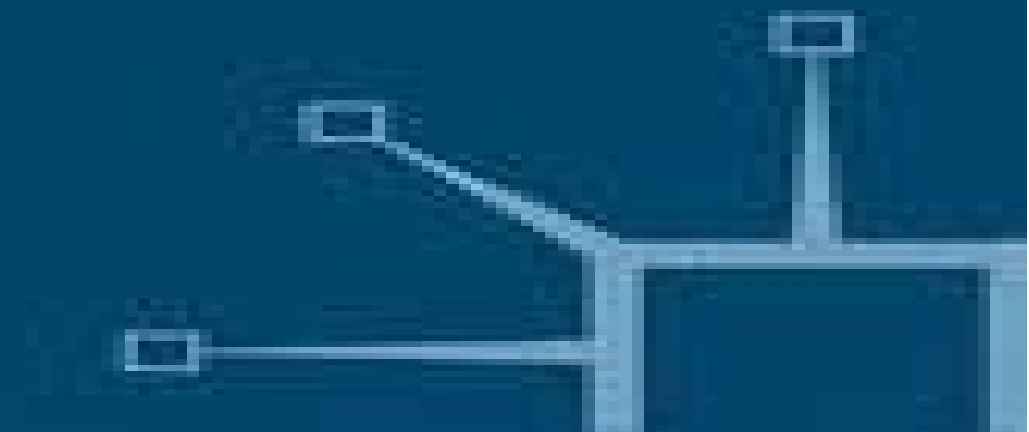


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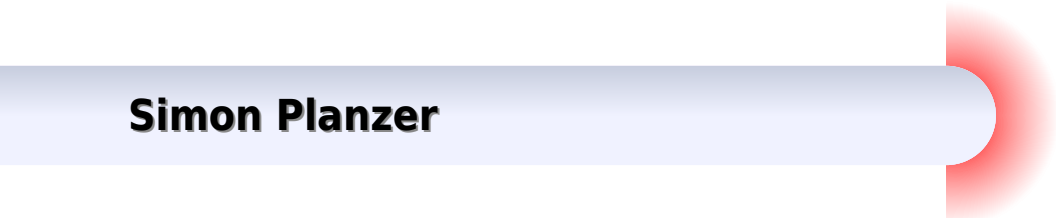
The Margins of European Law

Alan Ward



Margins Of European Law

Simon Planzer



Margins Of European Law:

The Margins of European Law Ian Ward, 1996-09-18 The Margins of European Law attempts to provide a critical and sceptical approach to European law The related themes of the book attempt to introduce a historical and theoretical context for European law Ultimately it is suggested that the new European order requires a very different legal and jurisprudential approach one which is distinctively post modern European Community law at its margins is a mass of inconsistencies and injustices and a post modern model can better effect the erasing of the margins of European law

The Margins of Discretion in Transnational Administrative Acts Kathrin Hamenstädt, 2022-05-05 This book analyses the expulsion of delinquent foreigners and their exclusion from the territory through a comparative lens The book begins with a vertical perspective focusing on the effects of European standards on the law of expulsion and entry bans in Germany and the Netherlands and the law regulating deportation from the United Kingdom It explores how these countries use their margin of discretion granted by European law to solve the societal political and legal challenges that are posed by delinquent foreigners Moreover it highlights the similarities convergences and differences between these countries approaches to the topic Subsequently the book adopts a horizontal perspective by focusing on the effects of national decisions on other states thereby addressing transnational administrative acts National expulsion decisions and entry bans can be given effect throughout European countries with the consequence that other states are in principle obliged to enforce them by refusing foreigners access to their territory This obligation arises despite the fact that expulsion decisions and entry bans are adopted on the basis of diverging national provisions Even though the margin of discretion of national decision makers has already been limited the remaining differences call for further recommendations which are put forward in this book

Human Rights in Contemporary European Law Joakim Nergelius, Eleonor Kristoffersson, 2015-01-22 This is volume 6 in the series Swedish Studies in European Law Arising from the work of two well attended seminars this new volume concentrates on highly topical issues in European Law current problems in the enforcement of human rights in Europe and the accession of the EU to the European Convention on Human Rights Among the topics dealt with apart from the accession issue are questions related to the enforcement of the Charter of Fundamental Rights human rights as general principles of law specific issues like the Double Jeopardy Clause in relation to Swedish tax law horizontal effect or so called Drittwirkung of human rights and the increased role of judicial and constitutional review in Swedish courts The book should be of value to any reader with an interest in such matters

The Constitutional Structure of Europe's Area of 'Freedom, Security and Justice' and the Right to Justification Ester Herlin-Karnell, 2019-04-18 This book explores the implications of freedom as a non domination oriented view for understanding EU security regulation and its constitutional implications At a time when the European borders are under pressure and with the refugee and migration crisis which escalated in 2015 the idea of exploring a constitutional theory for the Area of Freedom Security and Justice AFSJ might seem to be a utopian project This appears

especially true in the light of the increased threat of terrorism in Europe and on a global scale and where the expanding EU security agenda is often advanced through the administrative law path in contrast to the constitutional trajectory. Add to this the prolonged financial crisis which continues to cast a long shadow on the future development of EU integration and which suggests that Europe needs to re-invent itself beyond the sphere of economics. Therefore it is precisely because of the current uncertainties regarding the progress of the EU and the constitutional law project that a constitutional take on the AFSJ is of particular importance. The book investigates the meaning of non-domination and the idea of justice and justification in the area of EU security regulation. In doing so it focuses on the development of an AFSJ, what it means and why it represents a fascinating example of contemporary constitutional law with interacting layers of security regulation, human rights law and transnational legal theory at its core.

Europe's Passive Virtues Jan Zgliniski, 2020-05-21. The European Court of Justice has been celebrated as a central force in the creation and deepening of the EU internal market. Yet it has also been criticized for engaging in judicial activism, restricting national regulatory autonomy and taking away the powers of Member State institutions. In recent years the Court appears to afford greater deference to domestic actors in free movement cases. *Europe's Passive Virtues* explores the scope of and reasons for this phenomenon. It enquires into the decision-making latitude given to the Member States through two doctrines: the margin of appreciation and decentralized judicial review. At the heart of the book lies an original empirical study of the European Court's free movement jurisprudence from 1974 to 2013. The analysis examines how frequently and under which circumstances the Court defers to national authorities. The results suggest that free movement law has substantially changed over the past four decades. The Court is leaving a growing range of decisions in the hands of national law-makers and judges, a trend that affects the level of scrutiny applied to Member State action, the division of powers between the European and national judiciary and ultimately the nature of the internal market. The book argues that these new-found passive virtues are linked to a series of broader political, constitutional and institutional developments that have taken place in the EU.

The EU Charter of Fundamental Rights as a Binding Instrument Sybe de Vries, Ulf Bernitz, Stephen Weatherill, 2015-12-03. The entry into force of the Treaty of Lisbon in 2009 caused the EU's Charter of Fundamental Rights to be granted binding effect. This raised a host of intriguing questions: Would this transform the EU's commitment to fundamental rights? Should it transform that commitment? How, if at all, can we balance competing rights and principles? The interaction of the social and the economic spheres offers a particular challenge. How deeply does the EU conception of fundamental rights reach into and bind national law and practice? How deeply does it affect private parties? How much flexibility has been left to the Court in making these interpretative choices? What is the likely effect of another of the reforms achieved by the Lisbon Treaty: the commitment of the EU to accede to the ECHR? This book addresses all of these questions in the light of five years of practice under the Charter as a binding instrument.

The Function of Proportionality Analysis in European Law Tor-Inge Harbo, 2015-03-20. The proportionality principle has become ever

more important in European law and elsewhere. The career of the principle has attracted considerable attention from legal practitioners, legal theorists and political scientists alike, but the debate so far has been quite fragmented. In this new book, the author offers a broad and systematic analysis of the proportionality principle. Discussing and comparing proportionality analysis as applied by European courts, in part one of the book, the author proceeds to contrast proportionality analysis with alternative assessment schemes. In the third part of the book, the author reaches beyond doctrinal reconstructions as he deciphers the functions of proportionality jurisprudence. In view of the various facets of proportionality analysis, the author departs from the asserted infringement of a legally protected position by some regulatory act, proceeds to discuss the legitimacy of this intervention and undertakes an analysis of its suitability, appropriateness and necessity. According to the author, the safe grounds of proportionality means ends rationality do not suffice where the legitimacy of an infringement has to be assessed where conflicting values have to be balanced or where courts engage in a proportionality analysis *stricto sensu*. In the concluding remarks, the author proposes how proportionality analysis may be structured in order to better secure the legitimacy of the analysis.

The European Human Rights Culture - A Paradox of Human Rights Protection in Europe? Nina-Louisa Arold Lorenz, Xavier Groussot, Gunnar Thor Petursson, 2014-04-30. The European Human Rights Culture: A Paradox of Human Rights Protection in Europe analyses the political term European Human Rights Culture, a term first introduced by EU Commission President Barroso. Located in the fields of comparative law and European law, this book analyses through first hand interviews with the European judiciary the judicial perspective on the European human rights culture and sets this in context to the political dimension of the term. In addition, it looks at the structures and procedures of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) and explains the embedding of the Courts' legal cultures. It offers an in depth analysis of the margin of appreciation doctrine at both the CJEU and ECtHR and shows its value for addressing human rights grievances. This book is novel in that it combines interviews and case law analysis to show how a mix of differences on the bench are legally amalgamated to resolve probing legal questions and human rights issues. It shows through a combined analysis of case law and recent political developments for European human rights the tensions between judicial and political approaches and the paradox of human rights protection in Europe. It also offers in depth knowledge of the European human rights discourse. In addition to a rich study of legal materials, the book looks inside the box by adding the judiciary's perspective. Human rights are widely acknowledged in European societies and cases claiming human rights violations are increasing at both the CJEU and ECtHR. In these times of increased human rights awareness, this book uncovers a paradox in European human rights protection which is created by the push and pull between judicial and political interests.

The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence Howard Charles Yourow, 2021-09-27. The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence is the first full length monograph to treat this subject which is of central importance to the

interpretation and application of the European Convention on Human Rights It will enrich the understanding and appreciation of judges advocates civil servants scholars researchers students and indeed of anyone whose life and work is affected by national and international human rights adjudication This thorough and learned analysis synthesizes the work of the Strasbourg judicial organs proceeding in the light of the ongoing debates on the appropriate place of the margin doctrine in the Strasbourg jurisprudence The author's rich conclusions add texture and perspective to the future judicial and scholarly dialogues which will no doubt continue to surround this subject matter The text is eminently readable written in a clear and precise style to be appreciated by the novice and specialist alike The newcomer to human rights and to the Convention will find it an inviting introduction to complex material the expert will gain new and expanded insights into the development of the case law rarely to be found in this breadth and depth Human Rights and European Law Mary Arden, 2015 In light of recent criticism of the EU and Strasbourg Mary Arden makes an invaluable contribution to the debate on transnational courts and human rights Drawing on years of experience as a senior judge she explains clearly how human rights law has evolved and the difficult balances that judges have to strike when interpreting it *Empirical Views on European Gambling Law and Addiction* Simon Planzer, 2014-02-19 This book analyses the voluminous and meandering case law on gambling of the Court of Justice from an empirical perspective It offers a comprehensive overview of the legal situation of gambling services in the EU Single Market Additionally the book presents the current state of research on gambling addiction It then seeks to answer the central research question as to what extent the views of the Court of Justice on gambling find support in empirical evidence The Court of Justice granted exceptionally wide discretion to the Member States due to a so called peculiar nature of games of chance With the margin of appreciation having played a key role the book inquires whether the Court of Justice followed the principles and criteria that normally steer the use of this doctrine Noting the Court's special approach the book elaborates on its causes and consequences Throughout the book the approach of the Court of Justice is contrasted with that of its sister court the EFTA Court Finally the potential role of the precautionary principle and of EU fundamental rights in the area of gambling law is examined Situated at the intersection of law and science this book seeks to bridge the legal and scientific perspectives and the unique vocabularies common to each It illustrates the direct relevance of science and empirical research for court cases and policy making And it contrasts science informed policy making with the ongoing morality discourse on gambling **Human Rights: Universality and Diversity** Eva Brems, 2021-10-18 Human rights are by definition universal Yet in a world characterized by enormous diversity there is no consensus about the implications of the universality of human rights In several regions of the world human rights conceptions are promoted that challenge the mainstream largely Western dominated discourse on this subject This volume offers an analysis of context specific human rights discourses from East Asia Sub-Saharan Africa and the Muslim World Rather than interpreting these as threats to universality the author examines how and to what extent the claims that are advanced can and should be accommodated in

order to further the universality of human rights A theory of inclusive universality is developed and its implications are translated into legal techniques On the one hand there are flexibility techniques allowing for contextual diversity in the interpretation and application of human rights norms On the other hand giving credit to non Western views also implies that there should be room for transformation of those human rights norms

Judicial Authority in EU Internal Market Law Vilija Velyvyte, 2022-11-17 This book examines the role of the European Court of Justice in the regulation of the internal market from a competence perspective However rather than focusing on the Court's role in enforcing the limits of EU competence in the EU's political decision making it explores a related albeit understudied question to what extent does the Court observe the constitutional limits of EU competence and its own institutional powers in the interpretation of EU internal market law laid down in the Treaties The book provides an answer to this question through the analysis of EU free movement case law in light of the constitutional principles that govern the allocation of competences and powers in the EU conferral subsidiarity and proportionality on the vertical level and institutional balance on the horizontal level Why should the Court be bound by these principles What do they mean when applied to judicial practice To what extent are they observed in the free movement case law The book argues that the Court's observance of the four principles has been inconsistent thereby creating substantive and constitutional tensions in the EU's relationship with the Member States and upsetting the institutional balance of powers between the EU legislature and judiciary Shortlisted for the UACES Best Book Prize 2023 Runner up of the 2024 Peter Birks Prize for Outstanding Legal Scholarship

The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR Yutaka Arai-Takahashi, Yutaka Arai, 2002 5 2 3 Burden of Proof

The EU Treaties and Charter of Fundamental Rights: A Commentary, 2024-08-17 The second edition of The EU Treaties and the Charter of Fundamental Rights A Commentary provides an article by article summary of the TEU the TFEU and the Charter of Fundamental Rights to reflect the latest developments in the law since publication of the first edition in 2019 It offers a quick reference to the provisions of the treaties how they are interpreted and applied in practice and to the most important legal instruments enacted on their basis The fully updated Commentary considers key developments in all areas of EU law including the debates and requirements around the Rule of Law legal decisions in relation to the Covid 19 pandemic climate change measures such as the European Green Deal as well as recent changes to the Common Agricultural Policy It also includes significant court rulings on freedom security and justice migration and asylum as well as issues relating to freedom of movement and Brexit The new edition outlines the Digital Markets Act a major piece of legislation adopted in 2022 and contains significant updates on EU competition law in the light of new Regulations and Guidelines Written by a team of contributors drawn from the Legal Service of the European Commission and from academia the Commentary offers expert guidance to practitioners and academics seeking fast access to the Treaties secondary law and current practice The Commentary follows a set structure offering a short overview of the Article the Article text itself a key

references list including essential case law and legislation followed by a structured commentary on the Article The editors and contributors combine experience in practice with a strong academic background and have published widely on a variety of EU law subjects

The Rule of Law at the National and International Levels Machiko Kanetake, André Nollkaemper, 2016-04-21 This book aims to enhance understanding of the interactions between the international and national rule of law It demonstrates that the international rule of law is not merely about ensuring national compliance with international law International law and institutions eg international human rights treaty monitoring bodies and human rights courts respond to national contestations and show deference to the national rule of law While this might come at the expense of the certainty of international law it suggests that the international rule of law can allow for flexibility national diversity and pluralism The essays in this volume are set against the background of increasing conflict between international and national legal norms Moreover the book shows that international law and institutions do not always command blind national obedience to international law but incorporate a process of adjustment and deference to national law and policies that are protected by the rule of law at the national level

Fair Balance: Proportionality, Subsidiarity and Primarity in the European Convention on Human Rights Jonas Christoffersen, 2009-06-02 In one of the most important publications on the European Convention and Court of Human Rights in recent years a wide range of fundamental practical and theoretical problems of crucial importance are addressed in an original and critical way bringing a fresh coherent and innovative order into well known battle zones The analysis revolves around the Court's fair balance test and comprises in depth analyses of e g methods of interpretation proportionality the least onerous means test the notion of absolute rights subsidiarity formal and substantive principles evidentiary standards proceduralisation of substantive rights etc The author coins the term of primarity in order to clarify the obligation of the Contracting Parties to implement the Convention in domestic law

General Principles of EU Law and the Protection of Fundamental Rights Chiara Amalfitano, This insightful book analyses the role that EU general principles have taken in the protection of fundamental rights within the EU since the Lisbon Treaty In particular the author focuses on the relationship between written law the Charter of Fundamental Rights and unwritten law the general principles within the institutional framework of the EU The book demonstrates that due to their complementary and autonomous function toward the protection of fundamental rights the general principles still play a key role within the Union despite the binding force of the Charter

Culture and Human Rights: The Wroclaw Commentaries Andreas J. Wiesand, Kalliopi Chainoglou, Anna Sledzinska-Simon, 2016-11-07 The WROCLAW COMMENTARIES address legal questions as well as political consequences related to freedom of and access to the arts and old new media questions of religious and language rights the protection of minorities and other vulnerable groups safeguarding cultural diversity and heritage and further pertinent issues Specialists from all over Europe and the world summarise and comment on core messages of legal instruments the essence of case law as well as prevailing and important

dissenting opinions in the literature with the aim of providing a user friendly tool for the daily needs of decision or law makers at different juridical administrative and political levels as well as others working in the field of culture and human rights

Shaping EU Law the British Way Graham Butler, Adam Lazowski, 2022-11-17 In this book leading scholars of EU law judges and practitioners unpack the judicial reasoning offered by the UK Advocates General in over forty cases at the Court of Justice which have influenced the shape of EU law The authors place the Opinions in the wider context of the EU legal order and mix praise with critique in order to determine the true contribution of the UK Advocates General before hearing the concluding reflections by the UK Advocates General themselves The role of Advocates General at the Court of Justice of the European Union remains notoriously under researched With a few notable exceptions not much ink has been spilled on analysing their contribution to the judicial discourse that emerges from the Court's Palais in Luxembourg More generally their impact on the shaping of EU law is only sporadically explored This book fills the lacunae by offering an in depth analysis of the way in which the UK Advocates General contributed to development of EU law during 47 years of the UK's membership of the EU During their terms of office Advocates General Jean Pierre Warner 1973 1981 Gordon Slynn 1981 1988 Francis Jacobs 1988 2006 and Eleanor Sharpston 2006 2020 delivered over 1400 Opinions This staggering contribution of the four individuals and their cabinets of legal secretaries was supplemented by an Opinion of a then Judge of the Court of First Instance David Edward who was called to act as an Advocate General in two joined cases in what is now the General Court With the last UK Advocate General departing from the Court of Justice in September 2020 an important era has ended With this watershed moment it is apt to take a look back and critically analyse the contribution to development of EU law made by the UK Advocates General and to elucidate the lasting impact they have had on the nature of EU law

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