

**August Reinisch**

## **Recent Developments concerning the Immunities of International Organizations**

Most constituent instruments of international organizations provide that they shall enjoy those privileges and immunities which are necessary for the fulfilment of their purposes or functions. Because separate multilateral privileges and immunities agreements often provide for unqualified 'immunity from legal process' international organizations usually enjoy *de facto* absolute immunity from suit. In its 1999 landmark judgment *Waite and Kennedy v. Germany* (and *Beer and Regan v. Germany*), the European Court of Human Rights held that the right of access to court under Article 6 of the European Convention on Human Rights might be restricted for legitimate purposes, such as protecting the independent functioning of an international organization. However, such limitations were only legitimate and permissible if they were proportionate. In the Court's view, the proportionality of the grant of immunity depended upon the availability of 'reasonable alternative means.'

Over the last decade, this reasoning was followed by a number of domestic courts in Europe, which increasingly questioned the wide-ranging jurisdictional immunities of international organization. The influence of the *Waite and Kennedy* judgment is particularly fascinating in an area where traditional immunities under public international and human rights clash at a time of increasing calls for more accountability of international organizations. It also demonstrates the growing willingness of domestic courts to engage in applying and interpreting international law. Judicial conversations may appear in different forms, from explicit invocation of and reliance on to indirect engagement with such 'foreign decisions'. This presentation seeks to portray whether, how and to what extent national courts take into account the decisions of other national courts or international courts or tribunals using the example of privileges and immunities accorded to international organizations.

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His professional experience includes acting as expert adviser in Austrian and foreign court litigation as well as international arbitration; he was a Member of the ILA Committee on International Law on Foreign Investment, and he is a member of the ILA Study Groups on Accountability of International Organisations, State Insolvency, and the Role of Soft-Law Instruments in International Investment Law. He is president of the Austrian Branch of the ILA, Executive Board member of the European Society of International Law and of the German Society of International Law, as well as member of ASIL, ACUNS and other professional associations in the field of international law. He has published widely in international law with a recent focus on international investment law, the law of international organizations, international responsibility, human rights and non-state actors.

August Reinisch holds Master's degrees in philosophy (1990) and in law (1988) as well as a doctorate in law (1991) from the University of Vienna and an LL.M. (1989) from NYU Law School. He is admitted to the Bar of New York and Connecticut (since 1990).

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