## **CONTENTS**

Acknowledgements
INTRODUCTION. THE ECHR AND THE EUROPEAN CONSTITUTIONAL LANDSCAPE: REASSESSING PARADIGMS Giorgio Repetto
<ol> <li>The ECHR and the Idea of 'Constitutional Relevance'.</li> <li>The ECHR'S Constitutional Dimension in Domestic Law.</li> <li>The Trans-European Constitutional Relevance of the ECHR.</li> <li>The 'Italian' Perspective.</li> <li>Outline of Chapters</li> </ol>
PART I. ESTABLISHING A CONSTITUTIONAL DIMENSION FOR THE ECHR IN DOMESTIC LAW
PART I.A. THE RENEWING OF A CONSTITUTIONAL CULTURE: THE ECHR IN ITALIAN DOMESTIC LAW
The Constitutional Background of the 2007 Revolution. The Jurisprudence of the Constitutional Court  Diletta Tega
<ol> <li>The Value of the European Convention on Human Rights in the System of National Sources: Doctrinal Reconstructions</li></ol>
Rethinking a Constitutional Role for the ECHR. The Dilemmas of Incorporation into Italian Domestic Law Giorgio Repetto
<ol> <li>The New Ranking of the ECHR and the Shift to 'Constitutional Dualism'</li></ol>

<ol> <li>4.</li> <li>5.</li> </ol>	<ul> <li>2.1. 'Abstractness' and 'Embeddedness' in Constitutional Adjudication.</li> <li>2.2. The Model of the ECHR as 'Interposed Rule' and its Institutional Underpinnings.</li> <li>The Quest for Substantial Interaction Between Constitutional and Conventional Guarantees.</li> <li>'Italian Style' and the ECHR: The Current Situation.</li> <li>The Incorporation of the ECHR: A Matter of Constitutional Theory?</li> </ul>	44 45 48
	sbourg Jurisprudence as an Input for 'Cultural Evolution' in Italian	
1//	Andrea Guazzarotti	55
1. 2.	Strasbourg Jurisprudence and 'Culture' of Judicial Precedent in Italy Comparing the Reporting System of the Strasbourg and Italian Jurisprudence The ECHR and the 'Ad Hoc Balancing Delegated to Courts' The 'Concreteness' of the Tests Provided by the European Court	56
<ol> <li>4.</li> <li>5.</li> </ol>	of Human Rights	
<ul><li>6.</li><li>7.</li></ul>	Italian Constitutional Court	65
PAI A F	RT I.B. THE MOST DANGEROUS BREACH? THE RIGHT TO FAIR TRIAL AND THE QUEST FOR EFFECTIVENESS	69
The	Strasbourg Court's Influence on the Italian Criminal Trial  Mariangela Montagna	71
<ol> <li>2.</li> <li>3.</li> </ol>	The Dialogue Between Courts and the Protection of Fundamental Rights, Between Changing Roles and New Outlooks of Interpretation  Trial In Absentia and Remedies	72 73 74 75
	e ECHR's Influence on the Italian Regulation of the Administrative al. The Right to an Independent and Impartial Tribunal Marta MENGOZZI	83
1. 2.	Introduction: the Right to a Fair Trial in the Convention System	
	of the Dialogue Retween Legal Systems	81

**viii** Intersentia

	27
2 1	Case of Clear ECHR Influence: the So-called Force of Prevention 86
	Fertramely Complex Dialogue: The Simultaneous Freschee
	1 and Invicdictional Filmcilons in the bodies of
	Line Trictice
	Cartinal Dialogue: Non-indicial Positions Held by
	1 A - mintrotoc
Ac	Iministrative Magistrates
-	
	C.C. ECHR IN NATIONAL CONSTITUTIONS: COMPARATIVE
PART ]	ECTIVES 97
PERSP	ECTIVES
	Between the FII and FCHR Legal Systems?
Toward	d a Convergence Between the EU and ECHR Legal Systems?
A Con	parative Perspective 99
0	reste Pollicino99
	he Post-Enlargement Aggressive Phase of the European Court of
1. T	luman Rights
H	he Opposite Post-Enlargement Reaction of the Court of Justice of
2. T	he Opposite Post-Enlargement Reaction of the Composite Post-Enlargement Reaction (Composite Post-Enlargement Reaction Post-Enlargement Reaction Post-Enlargement Reaction Post-Enlargement Reaction (Composite Post-Enlargement Reaction Post-Enlargement Reaction Post-Enlargement Reaction Post-Enlargement Reaction (Composite Post-Enlargement Reaction Post-Enlargement Reaction Post-Enlargement Reaction Post-Enlargement Reaction (Composite Post-Enlargement Reaction Post-Enlargement Reaction Post-Enlargement Reaction Post-Enlargement Reaction (Composite Post-Enlargement Reaction Post-Enlargement React
t]	ne European Uniontofthe Supranational Laws.
3. T	he National Judicial Treatment of the Supranational Laws.
	Confirmation or Denial of the Convergence Process Identified at
t	he European Level?
	TOUR Comparative Remarks in Light
Natio	nal Constitutions and the ECHR. Comparative Remarks in Light
of Ge	rmany's Experience 119
	rmany's Experience  Alessandra Di Martino
	Introduction
1.	IntroductionThe German Federal Constitutional Tribunal and the European
2.	The German Federal Constitutional Tribunar and the 120
	The German Federal Constitutional Transaction 120  Court of Human Rights
	Court of Human Rights
	2.1. The Gorgulu-Beschup
	2.2. The Caroline-Ortell II
3.	D
	The ECHR in the Italian Legal Order
	1: ation and Construction of Utuliary Law in
	the the Convention
	2.2 Palancing and Reasonability Tests
	at The Langet of the FCHR and Related Case Law of National
	1 Locial ators
4.	Conclusion
4.	Concession

Intersentia

PART II.	INNER AND OUTER BOUNDARIES: THE RELATIONSHIP OF
THE EUR	OPEAN COURT OF HUMAN RIGHTS WITH CONTRACTING
STATES A	ND WITH THE EU

-	RT II.A. JUST DEFERENCE? THE MULTIPLE FACETS OF THE OCTRINE OF MARGIN OF APPRECIATION	137
	ching of Religion and Margin of Appreciation. The Reluctant eralism of the Strasbourg Court	
LIU	Alberto Vespaziani	139
1.	The Doctrine of the Margin of Appreciation	139
2.	The Folgerø v. Norway Case	141
3.	The Hasan and Eylem Zengin v. Turkey Case	143
4.	The Selective Liberalism of the Strasbourg Court	144
The	e Crucifix and the Margin of Appreciation	
	Ilenia Ruggiu	149
1.	A Constitutional Conversation over a Religious Symbol	149
2.	A Brief History of the 'Crucifix Issue' in Italy	
3.	Does the Use of the Margin of Appreciation Limit the Convention's	
	Rights?	152
4.	What are the Conditions for Using the Margin of Appreciation?	
5.	Was there an Alternative to the Margin of Appreciation?	
The	Unbearable Lightness of the Margin of Appreciation: ECHR and	
	o-Law'	
	Antonello Ciervo	159
1.	The Margin of Appreciation Doctrine in ECHR Case Law on	
	'Bio-Law': General Profiles of Reconstruction	159
2.		
3.	State Margin of Appreciation and End of Life Issues	
4.	Concluding Remarks on the Role of the Strasbourg Court on the	20,
	Sidelines of the ECJ Judgment Brüstle v. Greenpeace	170
His	tories, Traditions and Contexts in the Jurisprudence of the European	
	art of Human Rights	
	Andrea Buratti	173
1.	The Problem of the Use of History in Strasbourg's Jurisprudence	173
2.	Historical Argument in Strasbourg's Jurisprudence	
	2.1. Historical Contextualisation and Constitutional Tolerance	

3. 4.	<ul> <li>2.2. The Insufficiency of Historical Argument (<i>Sejdić and Finci v. Bosnia-Herzegovina</i>)</li> <li>2.3. The Flight From the Communist Past.</li> <li>2.4. Principle of Secularism and Historical Traditions</li> <li>2.5. The Use of Historical Argument: Open Questions.</li> <li>Denying Historical Truth: An Abuse of Law</li> <li>Towards a Conclusion: Protection of Historical Traditions or Critical Historical Method?</li> </ul>	179 181 183 184
DAD	T II.B. COOPERATION IN NEED OF COORDINATION:	
EUF	ROPEAN COURT OF HUMAN RIGHTS AND THE EU	189
Imn	nigrants' Family Life in the Rulings of the European Supranational	
Cou	Gianluca Bascherini	191
1.	Introduction	191
2.	The ECtHR's Jurisprudence on Immigrants' Right to Private and Family Life. The Progressive but Oscillating Enlargement of the	
	Protection Afforded by Article 8	
<ol> <li>4.</li> </ol>	The Jurisprudence of the ECJ: Is the Family Going to Market?	
Coo	pperation in Relations Between the ECJ and the ECtHR	
Coo	Angelo Schillaci	
1.	Separation and Cooperation	205
2.	The Opening up of the ECJ and the Comparative Method EU Law in ECtHR Case Law: Resistance and (Laboured) Opening	
<ol> <li>4.</li> </ol>	The EU Charter of Fundamental Rights in the ECtHR'S Case Law	
5.	EUCFR and 'Horizontal Clauses' in the ECJ Case Law: Towards	
6.	Another Centre of Gravity?	
The	EU and its Member States Before the Strasbourg Court. A Critical	
	praisal of the Co-Respondent Mechanism	
	Simone Vezzani	221
1.	Preliminary Remarks on the EU Accession to the ECHR: The	
	Problem of Shared Responsibility	221
2.	The Co-Respondent Mechanism as Envisaged in the Draft Accession Agreement	225
	2.1. Exclusion of <i>Intervention Forcée</i>	

Intersentia

## Contents

	2.2. Admissibility Criteria for Applications
	2.3. Prior Involvement of the ECJ
3.	Conclusion
СО	NCLUDING REMARKS
The	e Constitutional Relevance of the ECHR in Domestic and European Law.
Gei	neral Assessments
	Cesare Pinelli
1.	'Constitutional Justice' with Reference to the Strasbourg Court:
	A Preliminary Assessment
2.	Two Versions of 'Formalism'
3.	The Parallel Evolution of the Strasbourg Court and the Constitutional
	Courts
4.	Is the ECtHR Challenging the National Systems of Constitutional
	Adjudication?
5.	How Ordered is 'Ordered Pluralism'? A Tentative Approach
6	Examples from the Strasbourg Case Law 249