

The Conflict between State Immunity and Human Rights: Towards an International Compensation Mechanism

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Abstract

This paper discusses tension between the principle of state immunity and accountability in cases of severe violations of human rights. Therefore, the central research question would be: within what framework, if at all, does a balance between upholding the principle of state immunity and accounting for gross human rights violations strike a middle ground between state sovereignty and protection of victim's rights? The main hypothesis here is that an independent international compensation mechanism for victims of gross violations of human rights, rather than what exists under national courts, should be a solution to this problem. An analysis of the judicial practices of Italy, Greece, Germany, England, New Zealand, the Netherlands, Russia, Canada, and the United States is hereby made by using the analytic-descriptive method. The results reflect a wide range of policies, from the quite liberal Italian position to the very conservative English attitude. This paper concludes that an international compensation scheme would save the legal doctrine of state immunity while allowing justice to be accessible to victims and, further, helpful in providing a solution to this legal problem.

Keywords: Gross Human Rights Violations; International Compensation Mechanism; National Courts; State Immunity; Human Rights.

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