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Abstract

This thesis explores the application of the United Nations Convention on the Rights of the Child, 1989 ('the CRC') by domestic courts, in the light of the formal domestic rules which govern the relationship between international treaties and domestic law. The focus of the research has been on case law from three legal systems – Australia, France and South Africa – purposefully selected to represent three different reception models of international treaties in the domestic legal order, dualist, monist and hybrid respectively. The research has been conducted from a cosmopolitan perspective, in that the domestic jurisprudence has been used as an instrument for obtaining a better understanding about the CRC and its interaction with the selected domestic orders. The purpose of the thesis is not, therefore, to compare the three legal systems with one another, but rather to acquire a better understanding of the CRC as a legal instrument enforceable by courts.

Representative for the cosmopolitan vision which surrounds the CRC is the position of the Committee on the Rights of the Child ('the Committee') in relation to the role of domestic courts in giving effect to the Convention. The position of the Committee is that the courts are significant in giving effect to the CRC and should apply the CRC directly where possible, enforce all of its rights and resolve conflicts between the CRC and domestic law in favour of the Convention. This maximalist vision of the Committee confronts the more reserved position of the domestic courts in relation to their role in giving effect to the CRC, in the light of the formal rules concerning the relationship between domestic and international law.

The analysis of cases emanating from courts of highest jurisdiction in the three legal systems demonstrates that the formal rules of reception of international law in these systems are a starting point for the courts, but do not always explain why, how and with what effects the courts have given effect to the CRC. The courts have applied the Convention creatively, building on the strengths of their respective systems and compensating in this way for potential vulnerabilities in the domestic reception framework. It is shown that the Convention often operates in parallel with other domestic and international law, and its application and impact may depend on the CRC adding to the legal inquiry aspects not supported by other legal instruments (an added value, as this is termed in this thesis).

The thesis calls for, *inter alia*, an acknowledgement of the complexity of the role of the courts in giving effect to the CRC, as informed both by domestic and international law; and for a closer exploration of the added value of the Convention in relation to other laws. It also encourages a dialogue between the CRC Committee and the courts in relation to the interpretation of the CRC.

Curriculum Vitae

Meda Couzens (Ocna Mureş, 28 April 1975) has a law degree from Babeş-Bolyai University, Cluj Napoca (Romania). She trained to become a public prosecutor and thereafter worked for seven years as a prosecutor in Bucharest. In 2004 Meda obtained a Master's degree from the University of Bucharest and in 2005, an LLM from the University of London. In 2005, Meda moved to South Africa where she taught at Durban University of Technology (2006-2007), while studying for a Master's degree in children's rights at the University of KwaZulu-Natal, Durban. She graduated with this degree in 2009. From 2008 until 2015 Meda taught at the University of KwaZulu-Natal subjects such as human rights, constitutional law and family law. She specialised in the rights of children, and in 2011 she was promoted to a Senior lecturer position. In September 2012 Meda became an external PhD candidate at Leiden Law School of Leiden University where she conducted her research under the supervision of Prof. Ton Liefwaard and Prof. Julia Sloth-Nielsen. From 2015, Meda has been living in Sydney, Australia where she teaches (casually) Public International Law at the University of Sydney Law School.

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