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## Max Planck Institute for Comparative Public Law and International Law: Judicial Protection Against the Executive

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## RECENT BOOKS

### BOOK REVIEWS

JUDICIAL PROTECTION AGAINST THE EXECUTIVE. 3 Vols. Edited by the *Max Planck Institute for Comparative Public Law and International Law*, Heidelberg. Dobbs Ferry, N.Y.: Oceana. 1969-1971. Pp. lxxviii, 1658. \$62.50.

As the growing complexity of human society seems to necessitate governmental intervention and control in more and more fields, the question of judicial protection of individuals against the Executive becomes worthy of greater study. Thus the subject of the 1968 Heidelberg Colloquium was indeed appropriately selected. Herman Mosler, director of the organizing Institute, points out in his introduction that the topic was chosen in order to make a juridical contribution to the Year of Human Rights (1968) proclaimed by the United Nations.

The first and second volumes of the above-mentioned publication contain the national reports, totaling thirty-one, that were written by experts from a spectrum of countries that enjoy diverse political and economic heritages. The members of the European Communities—Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, and the Netherlands—have each been included. In addition to these, nine other member-states of the Council of Europe are represented: Austria, Denmark, Great Britain, Greece, Ireland, Norway, Sweden, Switzerland, and Turkey. There are also reports from three other nonsocialist European states, Finland, Portugal, and Spain. Czechoslovakia, Hungary, Rumania, and Yugoslavia represent the socialist European countries. Australia, Canada, Israel, Japan, and the United States have been included as non-European industrial countries. From Latin America come the reports of Colombia and Mexico. India has been selected because of that nation's position as a developing country of worldwide political importance, while the young African states are represented by Kenya. The series of reports also includes papers on the judicial protection of individuals within international organizations in general, and the European Communities in particular.

The variety of legal systems discussed in the national reports makes it possible to investigate, on the basis of comparative studies, whether and to what extent the general principles derived from such comparisons have been received, or can be recommended for reception, into international law. That is the purpose of the third volume. This volume contains eleven comparative reports, each written by a member of the Max Planck Institute on the basis of the national

reports, and four papers dealing with special international legal aspects of the subject under discussion.

The national reports appear to be of sufficient quality and clarity to depict the scope of judicial protection of individuals against the Executive in the various countries, and to enable the reader to make his own comparisons. This process of comparison is facilitated to a great extent by the fact that each national report has been based upon the same systematic questionnaire. It goes without saying, however, that the necessity for conciseness has forced the authors to leave out many nuances and details, and this, as always, entails the risk of some misunderstanding. To cite only one example: when Ule, in his discussion of the situation within the European Communities, states (pp. 1187 and 1212) that the Treaties of Rome do not allow natural and legal persons to appeal against regulations ("Verordnungen"), he leaves out the qualification—very important in view of the practice of the Communities—that these persons are nevertheless granted the right to appeal decisions that have *the form of a regulation* and also those provisions of a "real" regulation that have themselves *the character of a decision*.

In contrast to the national and comparative reports, the papers on the international legal aspects are more fragmentary and vague, as is, indeed, the international legal system itself. These papers result from the endeavor of the Colloquium's organizers to approach the subject under discussion not only from a standpoint of comparative jurisprudence among the national legal systems, but also from the standpoint of international law. In this respect the contribution by Helmut Steinberger, "Comparative Jurisprudence and Judicial Protection of the Individual Against the Executive: A Method of Ascertaining International Law?" is especially interesting.

It is, of course, impossible within this review to discuss each report separately. A reading of the reports *in extenso* is warmly recommended to everyone who is interested in the legal aspects of the relationship between individual and state. The collection contains reports in several languages; some are in English, the others in French or German. It is to be hoped that in the near future Oceana Publications will undertake the publication of an entirely English version of the first two volumes, as it has already done with the third.

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