

Maastricht University

The Faculty of Law is looking for a **PhD position International and European Law f/m (1,0 fte)** as from September 1st , 2009

Job Description

The PhD-fellow will participate in the METRO Graduate School of Law Programme, starting September 2009 and in one of the core research programmes of the Ius Commune or the Human Rights Research School. Supervision will be provided by individually assigned senior researchers. At least 80 % of the position will be dedicated to research and 20% to teaching activities.

Research Projects

The PhD-researchers will prepare a PhD thesis on the Project "Impact and effectiveness of human rights state reporting procedures at the domestic level: the case of the Netherlands" Supervisor: professor F. Coomans and Professor F. Grünfeld

Abstract:

Human rights state reporting procedures have often been characterised as a weak form of international supervision. Recommendations and comments made by supervisory bodies on periodic state reports ought to have a follow-up at the domestic level for their implementation. The present project proposal aims at researching their impact and effectiveness. The international influence on legislation and governmental policy in the Netherlands will be studied. The interaction between different actors at the national and international level, such as the treaty bodies, the government, parliament, NGOs and civil society will be researched.

Qualifications and Skills

University Graduates with relevant degrees; those having obtained a relevant Master's Degree with excellent grades. Motivated and determined researchers possessing first-rate analytical and writing skills in English and preferably also in Dutch.

- Good written communication skills in English. Command of the Dutch language
- Our preference is for graduates of Social Sciences or History Studies that are knowledgeable about Human Rights, or graduates of International Law/Human Rights Studies that are knowledgeable about Social Sciences, in particular influencing and decision making processes.
- Interest must be evidenced by courses elected, publications and/or written graduate work.

Organisation

Maastricht University/ Faculty of Law, International and European Law department.

Maastricht University distinguishes itself as a European research university with a strong international outlook and Problem-Based Learning (PBL) as a fixed value. Currently UM have around 13,500 students and 3,500 employees.

The Faculty of Law is renowned for its PBL teaching in both the Dutch Law programme and the programmes taught in English. Student body and staff are international. The Faculty consists of the following 6 departments: fiscal law; international and European law; foundations and methods of Law; private law; public law and criminal law. Research is concentrated in the accredited Ius Commune and Human Rights Research Schools. Major research areas are: comparative (private, public and criminal) law, international and European law and human rights. Academic interaction is further stimulated in such research institutes as the Centre for Human Rights, the Montesquieu Institute, the IGIR Institute for Globalization and International Regulation, the Maastricht Forensic Institute and in the METRO Graduate School of Law. More than 50 PhD researchers participate in the METRO Graduate School of law, half of whom are foreign nationals. For further details on the faculty and the research conducted go to: www.maastrichtuniversity/law and www.law.unimaas.nl/graduateschooloflaw

Conditions of Employment

Maximum monthly salary in Euros: € 2,042 gross per month in the first year up to € 2,612 gross per month in the fourth year and is based on the remuneration scale for PhD-researchers.

Employment: for determinate period of time. Contract duration: 4 years

Maximum hours per week: 38.

Additional Information

The full research proposal and more information on the project may be obtained from: professor A.P.M. Coomans, Tel. +31 43 388 3245/ 84907, E-mail fons.coomans@maastrichtuniversity.nl.

Additional information on the METRO Graduate School of Law: Mrs. Frederike Vernimmen – de Jong (programme manager METRO Graduate School of Law), Tel. + 31 43 388 2027/83020, E-mail: frederike.vernimmen@maastrichtuniversity.nl.

Application and Selection Process

Candidates are invited to submit a letter - either in Dutch or in English - containing their motivation for one of the above mentioned research projects, accompanied by a detailed CV, an academic transcript of grades obtained and contact details of 2 referees. At least one of these should be familiar with the candidate's academic abilities. This letter may be sent by e-mail to pzfdrvacatures@maastrichtuniversity.nl before 29 June 2009.

When applying for this job always mention the vacancy number.

Universiteit Maastricht

Binnen de Faculteit der Rechtsgeleerdheid is er een vacature van een **Promovendus Internationaal en Europees recht v/m (1,0 fte)** met ingang van 1 september 2009.

Functiebeschrijving

De promovendus participeert in het METRO Graduate School of Law programma, start September 2009, en in één van de onderzoeksprogramma's van de Onderzoeksschool Ius Commune of Rechten van de Mens onder supervisie van individueel toegewezen senior onderzoekers. Minstens 80% van de aanstelling is bestemd voor onderzoek, 20% voor onderwijs activiteiten.

Research Projects

De promovendus wordt aangesteld op het Project: "Impact and effectiveness of human rights state reporting procedures at the domestic level: the case of the Netherlands"

Supervisor: professor F. Coomans

Abstract:

Human rights state reporting procedures have often been characterised as a weak form of international supervision. Recommendations and comments made by supervisory bodies on periodic state reports ought to have a follow-up at the domestic level for their implementation. The present project proposal aims at researching their impact and effectiveness. The international influence on legislation and governmental policy in the Netherlands will be studied. The interaction between different actors at the national and international level, such as the treaty bodies, the government, parliament, NGOs and civil society will be researched.

Functie-eisen

Relevante universitaire (Masters) opleiding, afgesloten met uitstekende resultaten.

Gemotiveerde en resultaatgerichte onderzoekers met eerste klas analytische en schriftelijke vaardigheden in het Engels en bij voorkeur ook in het Nederlands.

- Goede schriftelijke uitdrukkingsvaardigheid in het Engels. Beheersing van het Nederlands.
- Bij voorkeur afgestudeerd in de Sociale Wetenschappen of Geschiedenis met kennis van de Rechten van de Mens dan wel afgestudeerd in Internationaal Recht/Rechten van de Mens met kennis van Sociale Wetenschappen en in het bijzonder van beïnvloedings- en besluitvormingsprocessen.
- Aantoonbare interesse blijkend uit bij voorkeur gevolgde vakken, publicatie (s) en/of schriftelijke werkstukken.

Organisatie

Universiteit Maastricht / Faculteit der Rechtsgeleerdheid, Internationaal en Europees Recht.

De Universiteit Maastricht (UM), is bekend om haar unieke, innovatieve, probleemgestuurde onderwijssysteem (PGO), dat wordt gekarakteriseerd door een kleinschalige en studentgeoriënteerde benadering. Het onderzoek aan de UM is multidisciplinair en thematisch van aard, en vindt geconcentreerd plaats in onderzoeksinstituten en schools. De UM heeft op dit moment zo'n 13500 studenten en 3500 medewerkers. Een groot deel van zowel studenten als medewerkers is afkomstig uit het buitenland.

Het PGO onderwijs aan de Rechtenfaculteit is gericht op het Nederlands Recht en op Engelstalige programma's. Studenten en medewerkers zijn internationaal georiënteerd. De faculteit bestaat uit 6 capaciteitsgroepen: belastingrecht, internationaal en Europees recht, grondslagen en methoden van het recht, privaatrecht, publiekrecht, strafrecht en criminologie. Het onderzoek is geconcentreerd in door de KNAW erkende onderzoeksscholen Ius Commune en Rechten van de Mens. De voornaamste onderzoeksgebieden zijn: vergelijkend (privaat, publiek en straf-) recht, internationaal en Europees recht en mensenrechten. Academische interactie wordt gestimuleerd in onderzoeksinstituten zoals het Centrum voor de rechten van de mens, het

Montesquieu Instituut, IGIR Instituut voor globalisering en internationale regulering and de METRO Graduate school of law. In de METRO Graduate School participeren meer dan 50 promovendi, waarvan de helft van niet-Nederlandse nationaliteit. Voor meer informatie over de faculteit en het onderzoek ga naar: www.maastrichtuniversity/law en naar www.law.unimaas.nl/graduateschooloflaw.

Arbeidsvoorwaarden

Het bruto maandsalaris bedraagt € 2.042,- in het eerste jaar oplopend tot € 2.612,- in het vierde jaar, conform VSNU Richtlijnen salarisschaal Promovendus. Contractbasis: Tijdelijk. Contractduur: 4 jaar
Maximaal aantal uur per week: 38.

Additionele informatie

Neem voor het uitgebreide onderzoekvoorstel en meer informatie over het project contact op met professor A.P.M. Coomans, Tel. +31 43 38 3245 / 84907, E-mail fons.coomans@maastrichtuniversity.nl Aanvullende informatie via Mw. Mr. Frederike Vernimmen – de Jong (programma manager METRO Graduate School of Law), Tel. + 31 43 388 2027/83020, E-mail: frederike.vernimmen@maastrichtuniversity.nl.

Solliciteren

Kandidaten worden uitgenodigd een brief te sturen, in het Nederlands of Engels, met hun motivatie voor één van de 3 onderzoeksprojecten, met uitgebreid CV, gewaarmerkte cijferlijsten en contactgegevens van 2 referenten, waarvan één referent bekend moet zijn met de academische kwaliteiten van de kandidaat, per mail aan: pzfdvacatures@maastrichtuniversity.nl vóór 29 juni 2009.

Wanneer u solliciteert naar deze functie vermeld dan altijd het vacaturenummer en refereer in uw schrijven aan deze website.

2009 Application Form for PhD Research Proposal University Maastricht Graduate School of Law

- This application may be submitted either with or without a PhD-candidate
- This application form may be completed either in English or in Dutch

Attaches

(only obligatory in case of application of a research proposal with a PhD-candidate)

1. Letter containing motivation and contact details of 2 referees. At least one of these should be familiar with the candidate's academic abilities.
2. Detailed CV, including – if applicable – relevant publications
3. Academic transcript of grades obtained

Registration form

1a. Name Applicant / Dissertation supervisor (promotor / co-promotor)

Prof. Dr. A.P.M. Coomans & Professor Dr. F. Grünfeld

1b. Details of PhD candidate

(If applicable)

-Name, title(s):

-Male/female:

-Graduation date

-University, Department (or Institute)

-Address for correspondence:

-Telephone:

-E-mail:

1c. Title of research proposal

Impact and Effectiveness of human rights state reporting procedures at the domestic level: the case of the Netherlands.

1d. Abstract

Obligatory! Max. 100 words

Human rights state reporting procedures have often been characterised as a weak form of international supervision. Recommendations and comments made by supervisory bodies on periodic state reports ought to have a follow-up at the domestic level for their implementation. The present project proposal aims at researching their impact and effectiveness. The international influence on legislation and governmental policy in the Netherlands will be studied. The interaction between different actors at the national and international level, such as the treaty bodies, the government, parliament, NGOs and civil society will be researched.

Research proposal

2a. Research topic and main research question

Research topic:

Impact and Effectiveness of human rights state reporting procedures at the domestic level: the case of the Netherlands.

Main research question:

What has been the impact and effectiveness of United Nations human rights state reporting procedures, in particular Concluding Observations, at the domestic level? The focus will be on the Netherlands, but a comparative dimension will be included by studying, from a general perspective, the situation in Denmark and Germany on the basis of secondary sources.

Main research approach:

The project will cover all six major UN human treaties to which the Netherlands is a State Party. The project will include at least three state reports per treaty and three sets of Concluding Observations on the Netherlands. This number seems to be safe in order to get a reliable picture of developments over time, including the period of time needed to follow-up Concluding Observations at the domestic level, monitor the situation and prepare a new State report. Covering six treaties seems to be feasible, that is why no selection has been made at the present stage.

Research work will include collecting relevant documents, such as Concluding Observations, Parliamentary and Governmental reports, so-called parallel reports compiled by domestic human rights NGOs, press reports, newspaper articles. A qualitative content analysis will be applied to these documents.

Furthermore, relevant (academic) literature will be studied, including materials on the situation in Denmark and Germany. With respect to these countries secondary materials will be studied and interviews will be held with the key persons working at the human rights institutes.

In-depth research will include interviews of relevant governmental and non-governmental actors, such as Members of UN monitoring treaty bodies, Ministers, civil servants, Members of Parliament, representatives of NGOs, journalists.

2b. Description of the proposed research (Word count: 988, including footnotes)

Max. 1.000 words (excl. references, including footnotes). Use Word Count to specify.

The Topic Explained

All major United Nations human rights treaties include a reporting procedure to monitor implementation of obligations by State Parties. State reporting as an international mechanism of supervision serves different objectives.¹ One key objective is a periodic review by a State Party of the state of implementation of human rights, progress achieved and obstacles encountered, and an assessment of the measures necessary to improve its human rights record. Another objective is that the reporting process should facilitate public scrutiny of government policies with respect to the implementation of human rights. The system of reporting is based on a so-called constructive dialogue between a treaty monitoring body and representatives of a State Party. Input for the dialogue comes from periodic reports submitted by States, plus alternative information presented by non-governmental organisations. Examination of a state report ends with the adoption of Concluding Observations by the treaty body.

Concluding Observations contain suggestions and recommendations for an improved implementation of the treaty standards by the state concerned. States are supposed to report in the next periodic state report, usually after approximately five years, on the measures that have been taken in the interim period, to follow up the suggestions and recommendations of the treaty body. Legally speaking, the conclusions and

¹ See Ph. Alston, 'The Purposes of Reporting', in: *United Nations Manual on Human Rights Reporting* (Geneva: UN, 1997), 19-24, at 21-23.

recommendations have no binding force for States. Although these merely constitute recommendations, they can be very meaningful because the progress (or lack of progress) in human rights implementation at the domestic level is assessed and made public.

Over the years there has been discussion about the nature of Concluding Observations. Some have questioned the abstract nature of Concluding Observations and called for more focused and operational recommendations in clear and practical language. Others think that the general language used in Concluding Observations provides latitude to governments to interpret them broadly. The fact that they are not legally binding would make the recommendations *de facto* ineffective due to an absence of enforcement. Other scholars, however, state that Concluding Observations do have authority, in particular in situations where a treaty body is of the opinion that a State Party's legislation, policy or practice is not in conformity with its treaty obligations.² In the academic debate the question has been raised whether state reporting procedures constitute a relatively weak form of international supervision, compared to judicial or quasi-judicial procedures, because their outcome is not enforceable.³

Research Questions

The main research question will be what has been the impact and effectiveness of state reporting procedures, in particular Concluding Observations, at the domestic level? It is difficult to measure influence in social sciences. In life sciences one is sometimes able to exclude all other factors – the *ceteris paribus* clause - to research the influence of one factor. With respect to the present research question we use two key concepts, namely 'impact' and 'effectiveness'. There is *impact* when Concluding Observations adopted by a treaty body are picked up and discussed by domestic actors, such as the government, parliament, NGOs and civil society. The international dimension of the reporting procedure is in the case of impact taken into account at the domestic level in the formulation of policy. Impact may lead to a change but the change of policy will be measured with the second concept, which is effectiveness. There is *effectiveness* when a change in domestic legislation or policy is announced and implemented as a result of Concluding Observations. Impact is a necessary condition for effectiveness. We are not able to exclude that the change may also have been caused by other factors. However we will be able to conclude at the end of the research whether the observed change at the domestic level has been inspired by the view at the international level. This has resulted in a different outcome when this impact would not have been taken into account.

One interesting sub-question is whether there are differences between treaties when it comes to impact and effectiveness of Concluding Observations? One hypothesis may be that the subject matter of some treaties (children's rights, women's rights) may be more prominent and appealing to domestic actors than other treaties. At governmental level some departments will be more orientated to and involved in specific treaties than in others. In the research project, differences in responsiveness between departments will be related to the bureaucratic organization at governmental level.

Another related issue is whether follow-up given to Concluding Observations in countries that have a National Human Rights Institute (Denmark, Germany) is different from the situation in The Netherlands that lacks such an Institute. The choice for Denmark and Germany has been inspired by a number of features that these countries have in common with The Netherlands. Both countries have a political system and a political culture that are similar to The Netherlands. Also the human rights record of these two countries is comparable to the one of the Netherlands. In addition, all three countries are multi-cultural societies with similar problems and challenges that give rise to human rights concerns.

² M. O'Flaherty, 'The Concluding Observations of United Nations Human Rights Treaty Bodies, 6 *Human Rights Law Review* (2006), 27-52, at 36.

³ A.F. Bayefsky, *The UN Human Rights Treaty System, Universality at the Crossroads* (The Hague: Kluwer, 2001).

Furthermore, NGO's in all three countries have taken part in the reporting process through the submission of parallel reports. From a constitutional law perspective there are similarities and differences. Germany has a monist system, while Denmark has a dualist system. The Netherlands is known for its qualified monist system. The relationship between the international and the national constitutional order is important in order to determine the status and effect of human rights treaties in the legal order of the respective states.

The study of Denmark and Germany aims at collecting general information on impact and effectiveness of Concluding Observations in these countries.

2c. Literature references

Max. 10 references.

- United Nations, *Manual on Human Rights Reporting*, (United Nations, Geneva, 2nd edition, 1997).

- Ph. Alston and J. Crawford, *The Future of UN Human Rights Treaty Monitoring*, (Cambridge, Cambridge University Press, 2000).

- A.F. Bayefsky (e.d), *The UN Human Rights System in the 21st Century* (The Hague: Kluwer, 2000).

- A.F. Bayefsky, *The UN Human Rights Treaty System, Universality at the Crossroads* (The Hague: Kluwer, 2001).

- M. O'Flaherty, *The UN and Human Rights. Practice Before the Treaty Bodies* ((The Hague: Martinus Nijhoff, 2002).

- F. Seidensticker, *Examination of State Reporting by Human Rights Treaty Bodies: An Example for Follow-Up at the National Level by National Human Rights Institutions* (Berlin: German Institute for Human Rights, 2005).

- M. O'Flaherty, *The Concluding Observations of United Nations Human Rights Treaty Bodies*, 6 *Human Rights Law Review* (2006), 27-52.

- A.P.M. Coomans, *Een 'Rosy Picture'?*, Nederlandse IVESCR-rapportage beoordeeld door VN-Comité, 32 *NJCM Bulletin* (2007), 745-753.

- M.M. de Boer, *Zorgen over status VN-Vrouwenverdrag in de Nederlandse rechtsorde*, 32 *NJCM Bulletin* (2007), 1218-1226.

- A. Müller, F. Seidensticker, *The Role of National Human Rights Institutions in the United Nations Treaty Body Process*, (Berlin: German Institute for Human Rights, 2007).

2d. Approach and global time plan over 4 years

Max. 200 words

The project will deal with six major UN human treaties to which the Netherlands is a State Party:

The Convention on the Elimination of Racial Discrimination (CERD)

The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The Convention Against Torture (CAT)

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The Convention on the Rights of the Child (CRC)

1st year:

Introduction into the UN system of human rights monitoring; nature and characteristics of state reporting as a method of international supervision; study of theoretical key concepts (impact, effectiveness); development of a general framework for the application of the key concepts to the six treaties.

Collecting primary sources + research on CERD and ICCPR.

2nd year:

Collecting primary sources + research on ICESCR and CAT.

Research on Denmark and Germany.

3rd year:

Collecting primary sources + research on CEDAW and CRC.

Comparison of the research results of all six treaties.

4th year:

Conclusions on the role different governmental departments had for the outcome of the research.

Conclusions on the roles domestic actors had on the outcome of the research.

Overall comparison of the research results on The Netherlands with Denmark and Germany.

Final conclusions and finalizing the manuscript.

2e. Scientific setting within research school / research area Maastricht Faculty of Law

Faculty research is concentrated in the Human Rights Research School and the Ius Commune Research School. Major research areas are: international and European law; comparative law and the relationship between international/European law and national law concerning all classical disciplines of law (private law, public law and penal law); human rights. See also www.law.unimaas.nl/graduateschooloflaw and the faculty research institutes.

The project will be carried out under the aegis of the Maastricht Centre for Human Rights (www.rechten.unimaas.nl/humanrights). Research carried out within the framework of the Maastricht Centre is interdisciplinary, with a particular focus on public international law, criminal law and social sciences. Research conducted within the Centre takes a normative approach, reflecting an integrated view of economic, social and cultural rights on the one hand and civil and political rights on the other, with close attention being given to gender issues. The project would also benefit from the infrastructure, facilities and cooperation offered by the Centre.

The Maastricht Centre is a member of the Netherlands School of Human Rights Research (www.law.uu.nl/english/orm). The project will be part of the clusters on International Norms and Procedures and Foreign Policy and Historical Dimensions of the Research

School. The researcher will participate in the Graduate Programme for all Ph. D candidates of the Research School.

In addition, the project would benefit from the ongoing research in the Faculty of Law of Maastricht University in particular the Ius Commune Research School (comparative constitutional law). For the constitutional law part of the project (role of parliament and relationship between government and parliament) cooperation will be established with the Montesquieu Institute.

2f. Scientific & Social Relevance

What's new / innovative and how can results be applied in other research areas?

How can results be applied in society, business, etc.

The innovative character of the current proposal is that for the first time ever systematic research will be undertaken to analyse the impact of UN human rights Concluding Observations at the domestic level of one state. The applicants are not aware of any other research or study of this type and nature.

It is the influence from the international level on the national level in the field of human rights for Western democracies and in particular for the Netherlands, which makes this research project a novelty. In the past research focused on the reverse relationship because it dealt with the Dutch influence on Human Rights at the international level both with regard to standard-setting and state practice.⁴

Presently the social relevance of human rights reporting as a mechanism to hold states accountable at the international is increasing. This can be seen, for example, from the new Universal Periodic Review procedure adopted by the United Nations Human Rights Council. The review of The Netherlands under this new procedure in April 2008 drew a lot of publicity.⁵

The results of the present research project may help in getting a better insight into the strengths and weaknesses of the state reporting procedure, raise awareness among all stakeholders (governmental departments, NGOs, the media, public at large) about the purposes of state reporting and (perhaps) strengthen implementation of Concluding Observations at the domestic level.

It is to be expected that at the end of the research period an assessment can be given on the question whether the drafting and wording of the Concluding Observations has facilitated or hampered their implementation at the domestic level. From these conclusions lessons may be drawn and suggestions made for changes in the working methods and practice of UN treaty bodies.

Finally, the results of the present research may have a more generalizing significance which goes beyond the case of the Netherlands. The results may lead to a reconsideration of the strengths and weaknesses of the state reporting procedure and the Concluding Observations as mechanisms for the international protection of human rights.

⁴ See P. Baehr, M. Castermans-Holleman, F. Grünfeld, *Human Rights in the Foreign Policy of the Netherlands* (Antwerpen: Intersentia, 2002).

⁵ See 'Hoe Nederland mensenrechten "net niet" naleeft', *NRC Handelsblad*, 16 April 2008, p. 1 and 3.