

Human Rights and the European Union

{ By Janice Duchene Clark

(jduchene@indiana.edu)



Overview



Why study human rights?

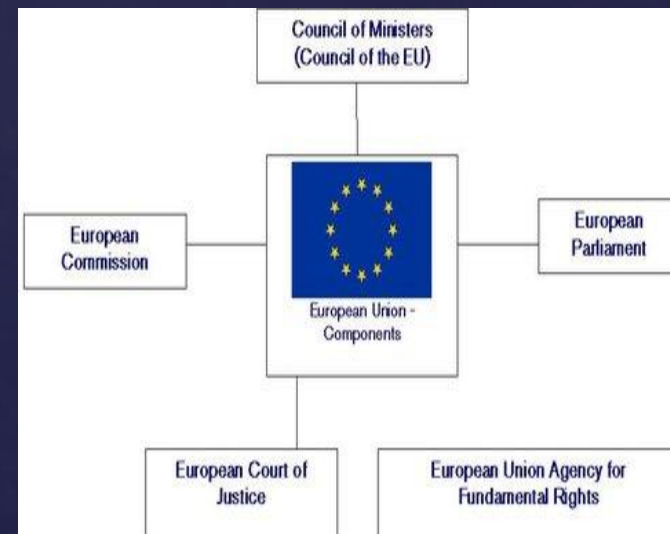
Why in the EU?

How does this relate to us in
the USA?

- Definition of Human Rights
- Background to Human Rights in Europe
- European Union Human Rights Legislation & Institutions
- Case Study: Roma
- EU Enlargement and Human Rights
- Case Study: Turkey
- EU Human Rights & External Policy
- EU Annual Report 2010
- Thoughts on the Future

- European Council: national & EU-level leaders – sets EU's overall political direction
- European Parliament: directly elected MEPs represent European citizens
- European Commission: represent interests of EU as a whole – members appointed by national governments
- Council of Ministers: where governments defend own countries' national interests
- European Court of Justice: upholds rule of European law
- Decision making made simple: Commission proposes new laws, Parliament and Council adopt them; Commission and Member States implement them

EU Institutions





Yellow = Member States

Purple = Candidate Countries

Light purple = other European countries

Background to Human Rights in the EU

- European Union (EU): currently consists of 27 member countries with the accession of Romania and Bulgaria on 1 January 2007.
- Candidate countries: former Yugoslav Republic of Macedonia, Iceland, Serbia, Turkey, Montenegro (as of 2011 – accession talks)
- Potential candidate countries: Albania, Bosnia and Herzegovina, Kosovo

- Catalyst for emergence of international human rights norms – Holocaust and response of Allies to killing of Jews, Roma (Gypsies), and others
- Nuremberg War Crimes Trials (1945-46) introduce crimes against humanity
- The United Nations: created in 1945
- Preamble of the UN Charter includes a determination “to reaffirm faith in fundamental human rights” and Article 1 lists “encouraging respect for human rights and for fundamental freedoms for all” as one of principal purposes.
- 1948: UN General Assembly adopted Universal Declaration of Human Rights. Also, the 1948 Genocide Convention made genocide an international crime.
- 1990s: Responding to Genocide (ICTR, ICC, etc.).

Europe and Human Rights



Evolution of EU Human Rights

- Original 3 European Community Treaties (1950s) had no human rights protection provisions
- 1957 EEC Treaty was restricted to economic integration
- Now – Court of Justice declared EC law includes protection of fundamental rights
- First rights protection were economic (ex. Right to property, freedom to pursue trade/profession)
- ECJ reviews not only its own human rights, but also those of Member States



Specific Human Rights Institutions

- Created in 1999
- Entirely independent institution that aims to promote education and awareness of human rights issues, improve the enjoyment of recognized rights, and identify possible shortcomings in national law and practice.
- Member states have a positive obligation to facilitate the independent and effective functioning of the Commissioner.

Council of Europe Commissioner for
Human Rights



- The European Fundamental Rights Agency monitors respect for the EU's core values. In particular, it provides assistance and expertise to Member States and the Union bodies implementing EU law on fundamental rights.
- Based in Vienna
- The Agency has been operational since 1 March 2007. It is the legal successor to the European Monitoring Center on Racism and Xenophobia (EUMC), having taken over its legal rights and obligations and its financial commitments.
- Cooperates with Council of Europe

European Fundamental Rights Agency



- Created in 2002
- In charge of monitoring and advising the EU in relation to fundamental rights issues

EU Network of Independent Experts on Fundamental Rights

- Has developed an American-style body of constitutional law
- Location: Strasbourg, France
- “The Supreme Court of Europe”
- Civil court, where individual Europeans sue European nations for violating their human rights
- Co-exists with EU Court of Justice (ECJ) – aka “high court of the EU”)
- Rulings on topics such as gay rights and corporal punishment in Britain; Muslim immigration in France
- Threat of suspension
- Case overload

European Court of Human Rights (ECHR)



- Emphasis on autonomy of Community general principles of law , with source of these not independent of legal traditions of Member States
- 1977: Commission, Council, and Parliament formally committed to ensuring respect for fundamental rights in their practices
- Principle of “evolutive interpretation”
- Impact of Court – interpretation of European Convention in light of current regional practices
- European Convention on Human Rights and ECHR as a special source of inspiration for the general principles of EU law
- Examples: discrimination against unmarried mothers in Belgium
- EU Fundamental Rights Agency - 2007

European Court of Justice (ECJ)



- Growing number of cases before ECJ in which ECHR jurisprudence is cited and followed
- Growing number of cases before ECtHR which indirectly challenge EU measures (*Posphorus* judgment)
- 2 European judiciaries and EU Charter seek to avoid conflict between 2 systems
- ECHR as floor not ceiling
- Accession of the EU to ECHR remains an issue (non-ratification of the Constitutional Treaty and Britain's worry).

Cooperation with ECHR



➤ EU human rights principles - set out in the Treaty on European Union and the Charter of Fundamental Rights.

➤ Based on programs such as PROGRESS, the EU focuses on combating discrimination, racism and xenophobia and on protecting vulnerable groups, such as children, women and minorities.

Legislation and Human Rights

- Examples of amendments to Treaty of the European Union (TEU); Treaty of Amsterdam (ToA), and Nice Treaty:
- 1. Article 6(2) of TEU says EU is founded on liberty, democracy, and respect for human rights & fundamental freedoms
- 2. Article 7 TEU (introduced by Amsterdam Treaty first), allows Council to suspend some voting/other rights of Member States in breach of Article 6

[amended in Nice Treaty – 2000] for more detailed/fairer procedures
Education projects for public to learn rights: “Leonardo da Vinci” and “Socrates”

Human Rights Amendments to Treaties

- Approved by Member States at the Nice European Council summit in December 2000
- A document of rights also contained in various European and international agreements as well as in international conventions from the Council of Europe, the United Nations (UN) and the International Labour Organisation (ILO), and national constitutions on which ECJ has drawn over years
- Seven Chapters:
 - 1. Dignity (ex. Right to life, freedom from torture);
 - 2. Freedoms (ex. Right to education & work)
 - 3. Equality (ex. Gender equality)
 - 4. Solidarity (ex. No child labor)
 - 5. Citizens' Rights (ex. Access to documents)
 - 6. Justice (ex. Right to fair trial)
 - 7. Horizontal clauses/general provisions of law

EU Charter of Fundamental Rights



- In December 2009, with the entry into force of the Lisbon Treaty, the charter was given binding legal effect equal to the Treaties.
- The charter brings together in a single document rights previously found in a variety of legislative instruments, such as in national and EU laws, By making fundamental rights clearer and more visible, it creates legal certainty within the EU.
- Informing public of rights (esp. of children) is key part to success

Charter of Fundamental Rights cont.



- Beneficiaries: children, young people (12 to 25 years old) and women who are, or risk becoming, victims of violence
- Goals: Strengthen cooperation between NGOs
- Develop awareness
- Study impact on victims of violence (ex. Social and economic costs)
- Funding from the EU includes grants, public contracts for monitoring and evaluation, etc.

Combating violence towards children, adolescents and women: Daphne III programme (2007-2013)



- Any export or import of goods that have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment is **prohibited**.

**Ban on trade in instruments of torture -
Council Regulation (EC) No 1236/2005 of
27 June 2005**

“An act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from that person or from a third person information or a confession, punishing that person for an act that either that person or a third person has committed or is suspected of having committed, or intimidating or coercing that person or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to, lawful penalties.”

Torture Definition (EU)

- Eurobarometer surveys show that 76 % of children interviewed are not aware that they have rights and 79 % do not know who to contact in case of need.
- The Treaty of Lisbon makes the promotion and protection of the rights of the child one of the objectives of the EU, which form part of the Charter of Fundamental Rights of the EU.
- All Member States have signed the United Nations Convention on the Rights of the Child (UNCRC).

- SOME ACTIONS:
- Attention to children in measures that Member States in Roma integration
- Encouraging setup of European hotline for missing children (116 000) and the introduction of “abduction alert” systems
- Adopting measures as part of the EU Safer Internet Program against bullying and the other risks run by child Internet users

Rights of the Child



- Under its Program for Employment and Social Solidarity (PROGRESS), the EU funds activities to combat racism and xenophobia within its borders.
- Nearly a quarter of PROGRESS' €743 million budget fights discrimination. The EU has also created a Fundamental Rights Agency (FRA).

PROGRESS



- The Stockholm Programme sets out the European Union's (EU) priorities for the **area of justice, freedom and security** for the period 2010-14.
- Builds on the achievements of its predecessors the Tampere and Hague programs, to strengthen the area of justice, freedom and security
- Priorities: Europe of Rights, Justice, Protection, Access, Solidarity, and a Globalized World

The Stockholm Programme

- Citizens and their family members may exercise in full the right to free movement;
- diversity is respected and the most vulnerable groups of people (children, minorities such as Roma, victims of violence, etc.) are protected
- the rights of suspected and accused persons are protected in criminal proceedings
- Cross-border crime given increased attention, such as:
 - trafficking in human beings;
 - sexual abuse, sexual exploitation of children and child pornography; cyber crime; drugs, etc.
- Justice example – common minimal standards across Member States

Stockholm: Europe of Rights & Justice



- Seeks to further develop its integrated border management and visa policies to make legal access to Europe efficient for non-EU nationals, while keeping security of its own citizens.
- Role of Frontex (the European external borders agency) must be made stronger
- The second generation Schengen Information System (SIS II) and the Visa Information System (VIS) are also vital for the system of external border controls and must therefore be made fully operational. (ex. Common visa policy enactment)

Stockholm: Europe of Access



This includes:

- maintaining a single external relations policy for the EU;
- working in partnership with non-EU countries;
- promoting EU and international values/standards , and ratification of United Nations, Council of Europe and the Hague Conference of Private International Law Conventions;
- using all available instruments and resources effectively;
- monitoring and evaluating actions in external justice and home affairs

Stockholm: Europe in Globalized World



- Article 49 of Treaty of European Union: any European state can apply to become a member, provided it is prepared to abide by EU principles (such as liberty, democracy, and respect for human rights and fundamental freedoms)
- Copenhagen criteria for candidate countries (December 1993 European Council in Copenhagen) [ex: stable institutions that guarantee democracy, rule of law, human rights, and respect for and protection of minorities, functioning market economy, etc)

EU Enlargement Protocol

Instrument for Pre-Accession (IPA):

- Financial instrument for the European Union (EU) pre-accession process for the period 2007-2013.
- Assistance is provided on basis of the “European Partnerships of the potential candidates and the Accession Partnerships of the candidate countries,” (Western Balkan countries, Turkey and Iceland).
- Provides assistance (including to improve human rights records and infrastructure) depending on progress made by the countries and their needs as shown in the EU Commission’s evaluations and strategy papers.

Pre-Accession Help

Key Dates:

- Earliest Accession: 2013 (Commission has said 2021)
- 30 June 2010 - Negotiations opened on Chapter 12: Food safety, veterinary and phytosanitary policy
- December 2006 - Turkey fails to relax restrictions on and apply to Cyprus the Additional Protocol to the Ankara Agreement,. Council postpones 8 chapters (including Free Movement of Goods, Customs Union and External Relations), as well as closing of any chapters until Turkey complies.
- December 1997 - Turkey eligible to become EU member (Luxembourg European Council)
- 1995 - Turkey-EU Association Council finalize the agreement creating a customs union between Turkey and the EU.
- April 1987 - Turkey makes an application for full EEC membership.
- September 1963 - Association agreement (Ankara Agreement) is signed, aiming at bringing Turkey into a Customs Union with the EEC.
- September 1959 - Turkey applies for associate membership of EEC

Case Study – Turkey as candidate country



- ECJ uses Member State law as inspiration but draws much less on it due to “common approach” reasons
- Also – fear of compromising ECJ doctrinal supremacy.

EU vs. Individual State Rights



Case Study: Roma (Gypsies)



- Estimated population of 10-12 million in Europe (approx. 6 million in EU)
- Largest ethnic minority in Europe
- Gypsies, Travellers, Sinti, and other self-identification titles
- Although EU countries all have transposed Directive on Racial Equality into national laws, Roma are still victims of prejudice and social exclusion (has long history, including Holocaust)
- Form of racism

General Facts on Roma Exclusion



ROMA EXPULSIONS

- Ex: European Commission against Racism and Intolerance of the Council of Europe condemned deportation of Roma in France, as well as conditions of camps where they lived)
- Also – Eastern Europe, Roma children often made to attend schools for those seen as “mentally deficient”
- Case of Germany repatriating Roma children to Kosovo

Examples of Roma Exclusion

- EU has stressed need for better Roma integration (ex. April 2010 “Communication on the economic and social integration of the Roma in Europe”)
- April 2011 – Commission adopted a “Communication on an EU Framework for National Roma Integration Strategies by 2020”
- June 2011 – EU Member States gave European Commission a strategy/policy measures for Roma inclusion in their State
- Recent EU Platform on Roma Inclusion (03/22/2012)

EU Action To Help Roma



External relations – with
non-EU countries



Aims to strengthen the EU's external ability to act through the development of civilian and military capabilities in the areas of crisis management & conflict prevention, as well as rule of law other principles

- 2003: first crisis management operation
- Through 2010, EU worked especially on gender equality policies and specific human rights mainstreaming
- Ex. Operation EUTM Somalia – trained soldiers in military, refugee law, gender issues, etc.
- Cooperation with cross-regional groups (ex. UN Special Rapporteurs in Sudan, Haiti, Somalia, etc.)
- Democracy promotion & social media security (anti-censorship)
- Critique: internal vs. external human rights enforcer

Common Foreign & Security Policy (CFSP)

- The European Union (EU) promotes compliance with international humanitarian law.
- IHL = law that regulates armed conflicts (Geneva & Hague conventions, as well as treaties, case law, and similar that follow)
- Some tasks: does crisis-management operations to collect info for use in International Criminal Court (ICC) or war crime investigation; sanction states in a conflict, educate military & law officials on rule of law

International Humanitarian Law (IHL)



Some Tasks:

- Prepares local strategies so that EU guidelines work in host countries for EU missions
- Shares info on human rights defenders with other countries/organizations
- Visits human rights defenders in custody & at trials
- Gives rapid assistance and protection to human rights defenders in danger in non-EU countries

EU as human rights defender



Future of EU Human Rights



- Shows the EU's human rights work with other countries (formal as well as direct assistance)
- Also examines EU's work in multilateral forums, especially the UN, in working to establish human rights as "indivisible and universal."

EU Annual Report on Human Rights and Democracy in the World: 2010



At a Glance:

- EU policy coherence good, but need to tailor to individual countries & situations
- **EU continued its longstanding policy of engagement with other countries with about 40 regular human rights dialogues, especially China & Russia**
- **On 26 April 2010 the Council adopted conclusions on improving prevention to tackle violence against women.**

**EU Annual Report Findings
cont.**

- 18 April 2012: The European Parliament voted to change the future direction of the EU's human rights policy and pave the way for a new position of "human rights czar".
- The report's author, British Labour MEP Richard Howitt (Socialists & Democrats), said the EU had finally "filled the gap" with the United States to discuss global human rights violations
- Parliament report overview:
 - Seeks export bans to be placed on technologies restricting internet freedom;
 - Asks governments to establish human rights consultations at same level as other foreign policy discussions.
 - Calls for each of the 130 delegations of the EU across the world to appoint a contact person responsible for human rights issues.

European Parliament Report Update on Human Rights



- Cooperation and Progress
- Internal vs. External Policy and Relations
- Hope for future
- Last thoughts – continued evolution of human rights
- Questions?
(jduchene@indiana.edu)

CONCLUSION

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