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**The Past, Present, and Future of Human Rights
in the European Union
Vanessa Sacks**



**Vol. 21, No. 6
Paper Series
May 2021**

Published with the support of the European Commission

The Jean Monnet/ Robert Schuman Paper Series

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These topics form part of the pressing agenda of the EU and represent the multifaceted and complex nature of the European integration process. These papers also seek to highlight the internal and external dynamics which influence the workings of the EU and its relationship with the rest the world.

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The Past, Present, and Future of Human Rights in the European Union

Vanessa Sacks*

“There can be no real human rights protection without mechanisms guaranteeing the rule of law, in particular by ensuring checks and balances among the different state powers” – Nils Muižnieks (The Council of Europe’s Commissioner for Human Rights)

Introduction

With the creation of the European Union, one of the four priorities of postwar, twentieth century Europe was to foster an area that strongly accentuated and valued human rights in every way. Since then, the EU as a regional integration body has placed human rights and its correlating policies at the heart of its institutions and member-states. Legal basis for the regional integration body’s strong emphasis regarding the commitment to human rights, both internally and externally, is featured in article 2, 3, 6, 21, and 205 of the Treaty on European Union¹. Beginning in 1950, the conversation surrounding respect of human rights within the EU commenced with the European Convention on Human Rights. Following this foundational precept, a variety of civil and political rights have been incorporated into the member states of the Council of Europe. After the Treaty on European Union, which formally established the European Community, the Treaty of Lisbon came into play as a constitutional project that began in 2001 and was entered into force in 2009. The Treaty of Lisbon paid homage to the foundational outlines of the Treaty on European Union, while redefining the present priorities and powers of the European Union, especially with detail to the rights of inhabitants of the member states. In the present day, numerous action plans have been drafted to specify the concrete missions and guidelines for human rights emphasis within the community and a variety of institutions have arisen to maintain and protect these rights. Moving forward, the EU continues to strategize and propose an array of human rights centered efforts to sustain the matter as a priority to the regional integration body. Moreover, The European Union defines “human rights” as, “respect for human rights and dignity, together with the principles of freedom, democracy, equality and the rule of law².” As a result, the EU has worked tirelessly on past,

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¹ Eur- Lex. *Charter of Fundamental Rights of the European Union*. Retrieved March 2, 2021 from <https://eur-lex.europa.eu/legal-content/>

² European Commission. “Human Rights and Democracy in the EU – 2020-24 Action Plan.” *European Commission*, ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12122-Human-rights-and-democracy-in-the-EU-2020-24-action-plan_en.

present, and future applications to integrate human rights as a focal point of the regional integration body and its policies.

Keywords: human rights, Council of Europe, European Union, member states, Strasbourg

I. Past Human Rights Efforts in the EU

As previously stated, the accentuation of protecting human rights within the European Union has been established far before the EU itself was even formally established. Two years prior to the formation of the European Coal and Steel Community, which sparked the uniting of European countries and was a fundamental starting point to the creation of the EU itself, “the Universal Declaration of Human Rights was proclaimed by the General Assembly of the United Nations on December 10th, 1948³.” The UN’s postwar call to action could not have come at a more perfect time, for the ideals present in the declaration were fresh in the minds of Robert Schuman and other EU founders, and thus incorporated as a focal point to EU priorities. According to McCormick, the beginnings of human rights policy are noted with the formation of the European Convention on Human Rights, also referred to as the Convention for the Protection of Human Rights and Fundamental Freedoms⁴. The European Convention on Human Rights “was opened for signature in Rome on November 4th, 1950 and came into force on September 3, 1953⁵.” The ECHR, since it was birthed before the birth of the EU itself, applies to the members of the Council of Europe, but the ideals are incorporated into the EU due to an overlap in priorities. After the horrific aftermath of World War Two, the ECHR “was developed to ensure that governments would never again be allowed to dehumanize and abuse people’s rights with impunity, and to help fulfill the promise of ‘never again’⁶.” The articles featured in the ECHR correspond with numerous articles featured in the UN’s declaration, and include sections such as: obligation to respect to human rights (article 1), right to life (article 2), prohibition of torture (article 3), prohibition of slavery and forced labor (article 4), right to liberty and security (article 5), and more. Since its first issuance in 1950, the Convention has been amended on numerous occasions to coincide with more recent human rights matters, most recently in 2013 with Protocol 16.

Following the implementation of the ECHR in 1953, the European Court of Human Rights was established in 1959 in Strasbourg, France. “The Court exists to safeguard the ECHR, providing a forum for people who believe their rights have been denied, allowing them to have

³ ECHR. “European Convention on Human Rights.” *European Convention on Human Rights - Official Texts, Convention and Protocols*, ECHR, www.echr.coe.int/. Accessed 10 May 2021.

⁴ McCormick, J. (1999). *Understanding the European Union: A concise introduction*. London: Macmillan Education.

⁵ ECHR. “European Convention on Human Rights.” *European Convention on Human Rights - Official Texts, Convention and Protocols*, ECHR, www.echr.coe.int/. Accessed 10 May 2021.

their cases heard⁷.” The Court is referred to as a ‘living instrument’ and ‘the conscience of Europe’, that actionably stands to protect, preserve, and provide accountability for the humanistic rights of citizens of the EU. “Since 1959, the Court has delivered more than 22,500 judgements. Most have been issued since 2000. This is because the Council of Europe more than doubled from 1990 to 2007, extending the jurisdiction to over 800 million people⁸.”

The orientation around protecting human rights gained further momentum in the 1960s, when the political precondition of respect for human rights by member states became required in order to join the EU. This precondition is noted in Aimee Kanner’s article, *European Union-Mercosur Relations: The Institutionalization of Cooperation*, in which she states, “the Birkelbach Report, approved by the European Parliament in January 1962, attests to the EU’s commitment to this moral political basis: ‘Only those states that guarantee authentically democratic practices in their territories and respect fundamental rights and liberties can be members of our Community’⁹.” Soon after, in 1966, the European Court of Justice ruled to form the Charter of Fundamental Rights as a legal structure, which includes dignity, freedoms, equality, solidarity, citizens’ rights, and justice as the main concerns regarding EU and worldwide human rights. Since then, the Charter has served as an outline for the protection of human rights within the EU and, similar to the Convention, is actionably regulated through the European Court of Human Rights.

The Treaty of Lisbon, which entered into force in 2009, called for further attention on the human rights matter within the European Union and called for an acceding to the European Convention on Human Rights. According to the Council of Europe, “The Treaty of Lisbon sets out the obligation: to respect fundamental rights within the European Union; to advance and consolidate human rights in EU external action¹⁰.”

More recently, in 2012, the Council of the EU established a Strategic Framework on Human Rights and Democracy which gained momentum through an outlined action plan and framework. The action plan outlines the governing principles, goals, and priorities surrounding explicit EU policies that seek to protect and accentuate human rights over the next ten years.

⁷ Amnesty International UK. “5 Ways the European Court of Human Rights Makes Us Safer.” *Amnesty International UK*, 18 May 2020, www.amnesty.org.uk/five-ways-european-court-human-rights-makes-us-safer-echr.

⁸ Greenberg, J. (2020). *Law, politics, and efficacy at the ECHR*.

⁹ Kanner, A. (2002). *European Union- Mercosur Relations: The Institutionalization of Cooperation*.

¹⁰ European Council. “Protection and Promotion of Human Rights.” *Consilium*, Council of the European Union, 9 Dec. 2020, www.consilium.europa.eu/en/policies/human-rights

II. Present Human Rights Efforts in the EU

On January 23rd, 2017, Michael O’Flaherty, the current Director of the European Union Fundamental Rights Agency, spoke at Poznan University in Poland to address the matter of protecting human rights in today’s Europe. In O’Flaherty’s speech, he addressed the achievements of Europe thus far in regard to human rights and payed respect to the UN’s 1948 Universal Declaration of Human Rights notable first article which states, “All human beings are born free and equal in dignity and in rights.” Throughout his address, O’Flaherty commends the great achievements and progress that Europe has made over the past several decades with its orientation around human rights. However, he also acknowledged the risks and issues that Europe, and the rest of the world, is now facing in this field. O’Flaherty asserts that, “Here in Europe, we are definitely seeing increasing intolerance, illustrated by rising hate crime and hate speech, particularly online. We are also seeing a lack of solidarity... Perhaps of greatest concern, though, is that we are seeing a growing tendency to question the very basics of Europe’s human rights framework¹¹.” O’Flaherty is not alone in his concern surrounding the matter, and several other human rights activists within Europe have shared his call to action.

In the present day, as previously noted, human rights in the EU are explicitly protected through the Convention and actionably regarded through the Strasbourg-based European Court of Human Rights. At the Court, citizens of member-states may bring cases and associated evidence of what they believe to be violations of their human rights, to the Court to provide reconciliation. The Court itself consists of 47 judges, corresponding to one from each member state of the Council of Europe, and over 600 administrative staff and lawyers. These individuals seek to uphold the articles of the Convention, as well as align with the foundational ideals of the European Union itself. In April 2016, Theresa May, a member of Parliament of the United Kingdom, stated that the UK should reject the ECHR because it ‘makes us less secure’. This statement rattled many Europeans and was struck with heavy oppositional backlash, which then spurred an acknowledgement of the most notable ways that the Court and the Convention has protected the rights of citizens of the UK. To name a few, the ECHR has bettered the lives of UK citizens by protecting LGBTI rights, through the landmark case *Smith and Grady vs United Kingdom*, making human trafficking and domestic slavery illegal, keeping children safe from the cane, fighting for a free press, and keeping one’s private life private¹². Thus, the ECHR, and the actionable upholding of its ideals through the Court, has succeeded in several ways in protecting the rights of UK, and other European, citizens.

Nevertheless, according to Jessica Greenberg, in her article *Law, politics, and efficacy at the European Court of Human Rights*, the Court is riddled with human rights issues itself, and,

¹¹ O’Flaherty, Michael. “Protecting Human Rights in Today's Europe.” *European Union Agency for Fundamental Rights*, 13 Feb. 2017, fra.europa.eu/en/speech/2017/protecting-human-rights-todays-europe

¹² Amnesty International UK. “What Is the European Convention on Human Rights?” *Human Rights in the UK*, Amnesty International UK, 21 Aug. 2018, www.amnesty.org.uk/what-is-the-european-convention-on-human-rights.

similar to O’Flaherty’s concern, reform is necessary in order to continue the EU’s emphasis and protection of human rights matters. In Greenberg’s article, she acknowledges the “gap between the hope offered by this court and its ability to enact change given the backlogs and pathways of the legal systems at play¹³.” Through Greenberg’s firsthand accounts and immersion into the Court itself, attention can be drawn to the potential legal and efficacy gaps in the EU’s protection of human rights. As a result, efforts have been made to further the respect to these rights, both domestically and globally, specifically through the 2020-2024 action plan.

III. Future Human Rights Efforts in the EU

After the end of the 2015-2019 EU Action Plan on Human Rights, which was adopted as a result of the EU’s 2012 Strategic Framework on Human Rights and Democracy, the 2020-2024 plan was set in to motion to address more current issues surrounding human rights within the EU and abroad. The new action plan seeks to globalize the EU’s pre-existing human rights initiatives and the main policy objectives will be to: “Enhance the EU’s leadership in promoting and protecting human rights and democracy worldwide; Provide a forward looking and strategic perspective on EU’s actions on human rights and democracy; Streamline a coherent EU approach to human rights and democracy in the world; Seek ways to promote more efficient and coherent decision making on human rights and democracy¹⁴.” The 2020-2024 action plan seeks to incorporate new issues that have arisen within the past several years, in addition to continuing to uphold the foundational goals of the Council of Europe regarding human rights matters.

Additionally, Greenberg’s and O’Flaherty’s call to action must be taken into account to aid in the future reform surrounding human rights both inside and outside the European Union. The growing issues of intolerance, lack of solidarity, and the questioning of past EU ideals, in addition to the growing gap between the hope offered by the Court and its ability to enact change, must be at the forefront of future human rights reform.

IV. Conclusion

Moreover, respect to human rights has been, currently is, and continues to be an essential concern for the European Union as a whole. Through a series of actionable measures, beginning with the ECHR and moving forward with the 2020-24 action plan, human rights remains at the core of EU civil and political centrality. It is a curious matter to see how far the respect to dignity, together with the principles of freedom, democracy, equality and the rule of law, has come since twentieth century postwar Europe. Yet, it is an even more curious matter to see how far it will come in the future of the regional integration body.

¹³ Greenberg, J. (2020). *Law, politics, and efficacy at the ECHR*

¹⁴ European Commission. *Human rights and democracy in the EU- 2020-24 action plan*. Retrieved March 2, 2021, from <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12122-EU-Action-Plan-on-Human-Rights-and-Democracy-2020-2024>

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www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon.