

Protection of Human Rights in Europe: Multilevel Protection Part Two

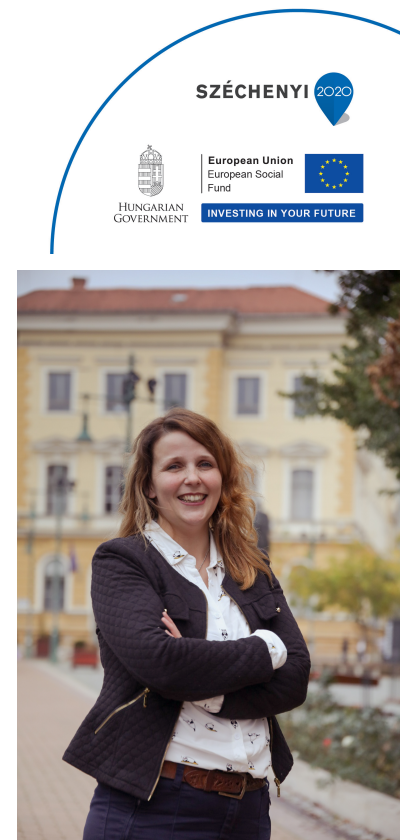
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‘we have to invest in preventing the conflicts of tomorrow, by sharing responsibility for the protection of human rights and the Rule of Law in Europe’ - Jolien Schukking

Class Summary:

Human Rights are not only legal norms setting limits on the exercise of public power but, as we have seen, they are also social and even cultural values. Due to their significance they benefit from protection at different levels in Europe. These levels can be divided into three areas. The first is the the national, constitutional protection of Human Rights. This level draws its strength from a long and permanent evolution of the concept of these rights but also from that of the modern State and of constitutionalism. The second is the international level of protection which was created at the regional, European level, so that it could offer an external control for the respect of Human Rights. Following the political and, in parallel, the legal evolution in Europe, for the first time after World War II, then after the change of regimes in Central and Eastern European countries, an important number of States are now part to this regional protection system, ensuring not only an efficient control of the respect of Human Rights but also a standardization in the field. Thirdly, with the European integration process, due to the sui generis legal system of the EU with its special characteristics, the protection of Human Rights was complemented by a third framework. This was first developed through judicial protections as general principles inspired also by the constitutional traditions common to the Member States and the European Convention of Human Rights, the protection of Human Rights has been guaranteed in the framework of the European Union’s legal system. Then, with further evolution, especially after European integration was launched in political fields, the development has led to a complex structure of protection of Human Rights in EU law. Those three different levels are working in connection with each other. These three levels operate in an interconnected way to ensure an elaborate protection of human rights in Europe. Each level represents a catalog of Human Rights and ensures an efficient protection for them thanks to a judicial forum having the competence to control the respect of these rights. Their importance is the main reason for such a complex system of protection, based on the political willingness to guarantee persons’

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fundamental rights in the exercise of public power. External control has been established to prevent any violation by the States and to guarantee the preservation of liberal constitutionalism in Europe. The protection of Human Rights has also been established in the framework of the EU as public power is also exercised at that level. Also, the national-level constitutionalism required the protection of Human Rights, as we have seen, at the level of the EU.

National Protection of Human Rights.

The question of the protection of human rights as discussed in previous classes developed through an evolution of theoretical and philosophical thought. This occurred against the backdrop of the development and the appearance of the modern States. Within the development of theories concerning human rights a positive list of rights was created. This list was viewed as containing those rights which should be guaranteed effective protection. These lists were then in turn codified and/or elaborated upon by the case-laws of the different countries. Also, within the theory of constitutionalism, many countries developed judicial forums which could then ensure efficient protection of human rights.

Regional, and European Protection of Human Rights.

After World War II, the framework of the Council of Europe established the regional mechanism for the protection of human rights. The development of this regional level was due in part to the aftermath of WWII where there were widespread violations of human rights but also because there was a complete lack of legal protections for human rights. With the establishment of the European Court of Human Rights and the European Convention on Human Rights a mechanism was established whereby there was an agreed list of human rights and a judicial venue whereby individuals could take their petitions.

European Protection of Human Rights.

Even though European integration was launched in the fields of a stronger economic cooperation regarding the establishment of the common market and lead to the four freedoms (free movement of persons, goods, services and capital), the question of the protection of Human Rights has been raised quite early in the framework of the so-called European Communities. The basic reason for this was that a new level of exercising public power appeared in the form of judicially declaring a sui generis legal system on the level of the EU.

As the efficiency of the integration required that the EU legal norms were to be applied directly in the national legal systems, benefiting of this primacy, the protection of individuals' fundamental rights were to be established as well.

Required Reading

Please click on the hyperlink to access the required reading.

1. **Multilevel Cooperation of the European Constitutional Courts**
2. **Multilevel Protection of Fundamental Rights in Europe: The Case of Spain**
3. **Europe's multi-layered human rights protection system: challenges, opportunities and risks**

Self-Check Questions

1. In the Spanish Constitution article 10.2 provides for: *"the rules concerning fundamental rights and freedoms recognised by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements ratified by Spain in these matters"*. Explain how this interpretation of fundamental rights has a limiting effect upon human rights protection.
2. Why has the concept of constitutional jurisdiction in recent years become more important for the protection of human rights?
3. Describe the process by which multilevel cooperation of constitutional courts occurs.
4. Who/What are the competing 'actors' in European human rights protection?
5. How can you differentiate between the sources of National/Regional and EU level protection?

Definitions/Key Terminology

- Multilevel
- Cooperation
- Constitutional
- Ratification



- Interpretation
- EU law
- European Convention of Human Rights
- Charter of the fundamental rights of the EU
- European Court of Human Rights
- Court of justice of the European Union

