

Protection of Human Rights in Europe: Multilevel Protection Part One

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'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.' Article 2 of the TEU

Class Summary:

In this class we will discuss the multilevel protection that exists for human rights. The protection of human rights is undoubtedly reliant and dependant upon the independence and quality of the judges appointed to the ECtHR and their ability to interpret the ECHR effectively.

The biggest challenge for the ECtHR is identifying common minimum standards balancing it with respecting the "plurality of national and supranational fundamental rights provisions." Protocol No.15 introduces the subsidiarity principle and the margin of appreciation doctrine.¹ Both principles work towards giving Member States the ability to interpret and apply human rights standards within the context of their nation state. SA mentioned in previous classes the accession of the CJEU was seen as one way by which to close t'the existing gaps in legal protection by giving European citizens the same protection vis-à-vis acts of the Union as they presently enjoy vis-à-vis all EU member states. In that context, the CJEU's objection against the ECtHR's human rights scrutiny in JHA's matters appears particularly problematic.² Rather the CJEU confirmed its previous case law where "unity, primacy and effectiveness of EU law"³, these elements must not be affected by accession. One of the major causes of concern for the CJEU is that the mutual trust between the EU member states could be upset by the accession as it could, 'upset the underlying balance of the EU to undermine the autonomy of EU law.'⁴ However, this is not a blind trust as has been most clearly seen in the application of the European Arrest Warrant. It is recognised that there are indeed varying standards of human rights protections across the Member States and it has been recognised that an EAW should not be executed where there is a real risk of inhuman or degrading treatment.

However, despite the CJEU's concerns that accession could upset the delicate relationship the risks of not acceding could be far

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¹ https://www.coe.int/en/web/dlapil/speeches-of-the-director/-/asset_publisher/ja71RsfcQTP7/content/europe-s-multi-layered-human-rights-protection-system-challenges-opportunities-and-risks?inheritRedirect=false#:~:text=The%20European%20

² https://www.coe.int/en/web/dlapil/speeches-of-the-director/-/asset_publisher/ja71RsfcQTP7/content/europe-s-multi-layered-human-rights-protection-system-challenges-opportunities-and-risks?inheritRedirect=false#:~:text=The%20European%20

³ https://www.coe.int/en/web/dlapil/speeches-of-the-director/-/asset_publisher/ja71RsfcQTP7/content/europe-s-multi-layered-human-rights-protection-system-challenges-opportunities-and-risks?inheritRedirect=false#:~:text=The%20European%20

worse resulting in legal uncertainty and most worryingly a lack of coherence in the application of human rights protection.

The European Multilevel protection of human rights is about empowerment. The Multilevel system is made up of several layers of protection, that complement each other. Consensus is key and needed on certain minimum standards of human rights. "The European system will only remain credible if it rests on mutual respect and trust, good will and cooperation."⁵

Reading Task

Please click on the hyperlink to access the required reading.

1. Multilevel protection of the rule of law and fundamental rights

Self-Check Questions

1. *'No society', argues Judge Mancini,²⁹ 'can be considered truly democratic if its citizens are denied the possibility of vindicating their legal rights in judicial proceedings, whether against the oppressive acts of a powerful legislature— even a democratically elected one—or against the unlawful practices of an overweening administration.'*⁶ Discuss.
2. What is the difference, if any, between the Constitutional and Conventional protections for human rights in Europe?
3. Which framework exercises external control of human rights in Europe?
4. Define what accountability networks are.
5. Explain what the accountability deficit is.

Definitions/Key Terminology

- Mechanism
- Jurisdiction
- Mutual Trust
- Empowerment
- Multilevel protection
- Accession

⁵ https://www.coe.int/en/web/dlapil/speeches-of-the-director/-/asset_publisher/ja71RsfCQTP7/content/europe-s-multi-layered-human-rights-protection-system-challenges-opportunities-and-risks?inheritRedirect=false#:~:text=The%20European%20

⁶ 9 F. Mancini and D. Keeling, 'Democracy and the European Court of Justice', (1994) 57 Modern Law Review 175, at 181.



- Plurality
- Supranational

