

The Future of Human Rights Protection in Europe

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Abstract

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In order to assess the likely future of human rights protection in Europe, it is necessary to flag some of the negative trends and developments that have threatened the post-war human rights acquis of standards, policies and institutions. Left unaddressed, these trends and developments augur a dark future for human rights in many areas of the continent.

The current slide downward began after 9/11. There has been very little reckoning and accountability for European complicity and responsibility in serious human rights violations in the context of anti-terrorist policies post9/11, including recourse to secret “rendition”, torture, and the widespread use of ethnic and religious profiling. Those responsible for helping establish and run “black sites” in Poland, Lithuania and Romania have not given an open accounting of their actions. Practically nobody in Europe has been punished for their cooperation with the US in violating human rights and this lack of accountability continues to erode our human rights system.

More recently, we have also seen broader democratic backsliding in a number of European countries, which raises the question about what European organisations can and should do in such circumstances. Membership in the EU and the Council of Europe was supposed to cement in incipient democratic trends in “new” member states and prevent “old” member states from straying from the democratic path. This has clearly not always worked. Within the EU, we have witnessed the spectacle of a Hungary regularly adopting laws that have proven so problematic from a human rights perspective that the Venice Commission – the Council of Europe’s constitutional advisory body has adopted a record number of critical opinions on a whole series of legislative acts in a very short period of time.

We have witnessed the spectacle of Council of Europe member state Azerbaijan regularly arresting, prosecuting, and imprisoning journalists and human rights defenders, only to release many of them each year under a presidential amnesty. In Azerbaijan’s capital Baku, demonstrations in the centre have been banned since 2006. In Russia we have witnessed democratic backsliding in a number of areas as well. Among the various developments of concern have been the adoption of a new law on non-commercial organizations that labels those receiving international funding as “foreign agents” and has numerous vague provisions that can be abused.

In an “old” EU and Council of Europe member state – Greece – Europe has watched with ineffectual concern the rise of a neo-Nazi party called Golden Dawn. This party has taken advantage of a toxic combination of uncontrolled mass migration (as of 2010 90% of irregular migrants’ apprehensions in the EU occurred in Greece), economic meltdown and the retreat of the state from many typical functions, such as providing daily security. The Golden Dawn party leadership had direct links with the old military junta, and many members have shown public and unabashed contempt towards parliamentary democracy. Many persons affiliated with the party, including some members of parliament, have engaged in acts of physical violence against

immigrants, minorities and human rights activists. What will Europe do if Golden Dawn becomes a coalition partner in a future government?

A different sort of challenge to the European human rights system is being posed by the United Kingdom, one of the oldest democracies and one of the founding states of the Council of Europe. The UK has limited its cooperation with other EU member states on justice and home affairs. Some British politicians in the ruling Tory party have even gone so far as to claim that the UK should only implement some European Court of Human Rights judgments, not all of them, thereby openly challenging the essence of the European human rights system. What the United Kingdom appears to forget is that, as recent European history has shown, in times of crises European states need to come together in unity and not resort to national isolationism.

On top of these negative trends in individual European countries, we also have several broader crises with a long-term negative impact on human rights. The exhaustion of EU enlargement, the political crisis surrounding ratification of the Lisbon Treaty and the Eurozone crisis have all led to the weakening of the idea of European integration, a questioning of the value of European solidarity and cooperation, scepticism towards European “peer pressure” and European “soft power”. While the weakening of the EU has global reverberations, it has an immediate impact on the EU’s periphery, in countries in the Western Balkans, Turkey, and in Europe’s Eastern Neighbourhood, where democratic conditionality no longer has the same clout it once did.

On top of this all we have the economic crisis, which has undermined the full spectrum of human rights, especially the social and economic rights of the most vulnerable, access to justice, the status of independent institutions such as ombudsmen and equality bodies and much more. Some of the damage will be long-lasting, particularly since many of the victims of austerity are children and youth. We have witnessed a huge increase in child poverty, a re-emergence of child labour, and decreased access to education, which will have negative long-term effects on a whole generation. Massive youth unemployment – the most common social pathology of states in economic crisis – means this generation has no reason to believe in the European social model, rhetoric about solidarity, and the promises of the political elite. The economic crisis is feeding into various social and political movements, some of which have anti-democratic methods or goals.

What can be done to arrest these negative trends? Is there any light at the end of the tunnel? We must strongly repudiate the anti-human rights component of the so-called “war on terror”, combat impunity, establish the truth, and compensate victims. There is a need for a real, Europe-wide reckoning. There are some small stirrings of this in Dick Marty’s work under the auspices of PACE, that of the European Parliament, the recent ruling of the European Court of Human Rights in the El Masri case, but much remains to be done.

The core of the European human rights system – the European Court of Human Rights and implementation of its judgments – must be strengthened. The backlog of cases has been significantly reduced, but execution of judgments remains problematic in many countries. We must mobilize all Council of Europe bodies and mechanisms to push for effective implementation. Interestingly, EU institutions, including the European Parliament and DG Enlargement are also increasingly calling for implementation of the Court’s judgments. So far, this has applied primarily to candidate countries. Could the EU not become more involved in pushing for implementation of the Court’s judgements within EU member states?

There are more and less human rights compliant ways of responding to the crisis and bringing one’s financial house in order. What would a human rights compliant response look like? First of all, governments should

adhere to the procedural human rights principles of transparency, accountability and participation. The last principle – participation – is essential, because we have seen that if people are not consulted, not allowed to have their say in budgetary processes and reforms beforehand, they will have their say afterwards in the streets. Secondly, governments should maintain funding for ombudsmen, equality bodies and other aspects of the human rights infrastructure which help those who are most vulnerable. Governments should involve these national human rights structures in doing human rights analyses of budgets and monitoring the impact of austerity on vulnerable groups. Thirdly, governments should establish social protection floors in line with the standards of the European Social Charter. Clearly, special attention needs to be paid to children and youth.

Among the most serious specific challenges to human rights in Europe are issues pertaining to migration and racism, including anti-Gypsyism. It seems likely that migration from outside Europe will continue and that many will mobilize against it. The Dublin returns system will continue to unravel due to court challenges, but the pressures on Greece, Italy, and Malta will persist. Bad national and European migration policies – the criminalization of migration, long detention of migrants, the absence of integration measures will continue to feed into racism. Moreover, migration will begin to create new strains in Central and Eastern Europe as these countries become countries of destination. Migration of Roma within Europe will continue, despite increasingly sophisticated efforts to pressure countries of origin to stop it.

This will all provide fodder for far-right political movements, which have become fixtures in the European political landscape with a deleterious effect on other parties, public discourse and policy on minorities, migration, asylum and equality. Similarly to the situation with the rise of Jorg Haider and the populist right Austrian Freedom Party in 2000, the EU, the Council of Europe, the OSCE and the UN have had little impact on Golden Dawn, Jobbik and similar parties, which undermines the credibility of the regional human rights regime and creates huge threats to human rights within these countries.

What is to be done? I see no medium to long-term alternative to a true European-level migration policy with real solidarity – if we prove incapable of forging such a policy, it seems very likely that southern tier countries will continue to resort to policies that are at variance with human rights, such as push-backs at sea or at land borders. It is also absolutely necessary for the EU and its member states to involve, in a resolute and systematic manner, in these efforts neighbouring or other countries, such as Turkey, that play a pivotal role as transit countries for migrants including asylum seekers. Europe also needs human rights compliant immigrant integration strategies with a focus on effective anti-discrimination measures, promoting interaction between newcomers and the host society, and promoting participation.

While promoting immigrant integration, we also need to implement Roma integration strategies and focus on combatting anti-Gypsyism, providing access to mainstream education, and involving Roma more effectively in policies affecting them. The Council of Europe, the OSCE and the EU could play a much larger role in this realm. In the realm of antidiscrimination, one of the few human rights areas where the EU has legislative competence, it should require its member states, candidate countries and European Neighbourhood Policy countries to fully implement the “Race directive”.

Regarding racist and neo-Nazi political parties, I believe we must create some political “red lines”. Here, we do not have to reinvent the wheel, as we have the International Convention on the Elimination of All Forms of Racial Discrimination. It requires states to “declare illegal and prohibit organizations, and also organized and other propaganda activities which promote and incite racial discrimination”. If countries do not ban such

organizations, they should keep them under very strict scrutiny, actively prosecuting individual politicians for hate speech and hate crimes.

The future of human rights will also depend on the extent to which human rights advocates are able to minimize digital risks and maximise digital opportunities. What are the key risks? Among them, I would highlight fragmentation of the net into national spaces with varying degrees of direct and indirect censorship; abuses of the opportunities inherent in expressing oneself on the internet, such as hate speech, child abuse, terrorist training/recruitment, and cyber-war; the internet also poses a growing threat to privacy through the use of surveillance, data mining and profiling for law enforcement, national security, marketing and other purposes.

What can be done to minimize these risks and maximize the huge human rights opportunities inherent in the internet? I think regional human rights organizations, such as the Council of Europe and the OSCE, as well as national human rights structures, must insist on protecting the Internet as an open space for the exercise of the right to receive and impart information, and create internet human rights outreach strategies. We are still catching up with the excellent work being done by NGOs and the private sector. Could not the Council of Europe Development Bank, together with the European Commission, focus on providing funding to make access to a rapid internet throughout the Council of Europe a reality? This would be a great investment in human rights if, at the same time, we could vigorously challenge unjustified restrictions. We need to strengthen data protection bodies and ensure their existence, independence and efficient functioning in all Council of Europe and OSCE member states. Finally, we need to have broad-based European digital literacy campaigns, including in-service training for many who came of age without Facebook, Twitter, YouTube, blogs, etc.


There are other new trends which augur hope for human rights protection in Europe. I do not have time to delve into them in detail, but let me mention just a few. At the international level, the UN's Universal Periodic Review process has been a constructive force in many European countries, promoting dialogue between civil society and governments and more systematic human rights work at national level. Increasingly, European states are ratifying the OPCAT and creating national preventive mechanisms to prevent torture in places of detention.

Despite regular budget crises, the OSCE continues to do very useful work. The Representative on Freedom of the Media fills a unique niche, as does the High Commissioner on National Minorities. The OSCE Missions, though dwindling in number, are the international human rights presence in many countries in the Western Balkans and South Caucasus. The OSCE's election monitoring continues to be second to none in quality.

The EU has increasingly included human rights on its agenda both within the EU and in external relations. Here, it is worth noting the growing role of the European Parliament in human rights and the creation of a Special Representative for Human Rights working under Lady Ashton. The next big step is the European Commission's ratification of the European Convention, which will enhance coherence in the European legal space. A key feature will be the extent to which the next round of structural funds are used for the benefit of human rights. This is particularly relevant in terms of migration, social inclusion of disadvantaged groups, including Roma, disability rights, prisons and other places of detention.

Finally, I draw hope from the many courageous human rights defenders and NGO activists I have encountered on country visits all over Europe. These are tough, persistent, smart people – and there are many of them in Europe. It is to NGOs which have been active, committed, professional and persistent over many years that we must pay tribute for many of the human rights achievements of recent decades. We cannot allow these successes to be undermined.





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Security and Human Rights (formerly Helsinki Monitor) is a journal devoted to issues inspired by the work and principles of the Organization for Security and Cooperation in Europe (OSCE). It looks at the challenge of building security through cooperation across the northern hemisphere, from Vancouver to Vladivostok, as well as how this experience can be applied to other parts of the world. It aims to stimulate thinking on the question of protecting and promoting human rights in a world faced with serious threats to security.

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