Ius Commune Conference 2024

Workshop: Shared Responsibilities for the Protection of Fundamental Rights in Europe

Thursday, 28 November (14.00 – 18.00)

Room

Participants

More than ever before, the European Union presents itself as a fundamental rights actor, and is developing policies and legislation with a view to shaping and protecting (certain) fundamental rights. But EU fundament rights law does not exist in a vacuum: it is closely connected to national (constitutional) systems of fundamental rights protection, to the ECHR and other international human rights instruments.

This workshop addresses some of the issues arising from the interconnectedness between EU law, ECHR, international and national law in the field of human rights.

Chair: Monica Claes (Maastricht University)

Discussants: Šejla Imamović (Maastricht University) and **Elise Muir** (KU Leuven)

Anne-Sophie Lemmer (KU Leuven)
EU Standards on judicial appointments. A clarification, revision and further development of EU legal requirements

Whereas the need to appoint judges is universal to all justice systems, there is a sheer variety of different judicial appointment procedures in the Member States. The EU, initially, did not pay significant attention to judicial appointments at national level. But since the "rule of law backsliding" of some Member States, EU standards for judicial appointment procedures were established via "soft instruments", such as the Rule of Law Reports, and case law of the Court of Justice of the EU.

Several uncertainties regarding these EU standards persist. Firstly, there appear to be different types of EU standards: The adherence to some of them seems to be only desirable at EU level, other requirements seem to be actually legally enforceable. However, the line between is unclear. Furthermore, the EU standards strongly emphasize the judges' independence from the Executive and Legislature. This could lead to a neglection of other legitimate values pursued by judicial appointment procedures, such as the principle of merits, the democratic legitimacy of appointed judges or the effectiveness of such procedures. Finally, other issues related to judicial appointment procedures may not have been addressed at EU level yet.

It is the PhD project's primary goal to address these questions by shedding light on the contours and substance of legally enforceable EU requirements in this field. Building on an in-depth comparative analysis of some Member States' judicial appointment procedures, the project will attempt to clarify, where appropriate normatively revise and further develop legally enforceable EU legal requirements.

Stevi Kitsou (Maastricht University)
Addressing hate speech in the EU: towards a comprehensive regulatory framework?

Hate speech is both a social and legal concept, covering a broad spectrum of racist and discriminatory acts, including incitement to violence, harassment, stigmatization, and the reinforcement of harmful stereotypes. Such actions disproportionately target oppressed and traditionally marginalized groups based on perceived characteristics, threatening not only individuals but also broader societal cohesion. At its core, hate speech challenges the foundational values of the EU, primarily human dignity, freedom, democracy, and equality. In this context, and in line with the EU's commitment to safeguard these principles, a critical assessment of the EU's current regulatory framework is essential. The presentation will examine whether existing measures at the EU level adequately address the multifaceted threat of hate speech, while ensuring equal protection for all, upholding fundamental rights, and aligning with broader European human rights standards, particularly those defined by the (ECHR) and by Council of Europe bodies.

Nozizwe Dube (Maastricht University)
A Typology of comparators and comparisons in EU Equality law

Comparison plays a sacramental role within EU equality law. However, comparison also deflects EU equality law from its main task: identifying and dismantling systems of marginalisation that cause discrimination. This presentation disrupts the prevailing narrative about comparison as an inescapable feature of equality analysis. A closer look at comparison reveals its objective veneer that conceals its commitment to sustaining a formal model of equality by endorsing societal majoritarian norms that disproportionately harm people at the intersection of multiple axes of marginalisation. This makes equality law an assimilationist, instead of transformative, device. By deviating from comparison, EU equality law can advance towards a transformative understanding of equality that centres intersectionality. The key therefore lies in the development of comparator-free equality analysis which relies on the understanding that discrimination is contingent on unequal resource and power distribution, creating systems of marginalisation. Hence, instead of comparing a claimant to an inter- or intracategorical comparator, comparator-free approaches assess dignitary harm by contextualising discrimination in the broader social, legal, and historical patterns of disadvantage that created it to establish a presumption of disadvantage.

Coffee break

Alessandro Marcia (Maastricht University)
The EU's approach to LGBTIQA+ equality before and after Coman

Achieving LGBTIQA+ equality within the EU largely depends on the commitment of the Member States, as competence in critical policy areas remains national. However, the recent case-law of the Court of Justice, especially in cases Coman and VMA, encouraged the European Commission to adopt a more proactive approach on the issue.

Indy Goetelen (Hasselt University)
Implementation of Protocol No. 16 to the ECHR in the Belgian legal order

The implementation of Protocol No. 16 to the ECHR in the Belgian legal order is taken as a case study to reflect upon the central question how the ECHR system and the national legal systems interrelate, and, more specifically, the question how domestic implementation of this Protocol contributes to the aim of Protocol 16. This Protocol gives the possibility to the highest courts of the ratifying High Contracting Parties to request advisory opinions from the ECtHR on questions of principle relating to the interpretation or application of the rights and freedoms in the ECHR and Protocols thereto. Through this advisory mechanisms, Protocol No. 16 to the ECHR aims for a

dialogue between national highest courts and the ECtHR in order to increase the application by national (supreme) courts of the ECHR and related case law of the ECtHR. In Belgium, the Court of Cassation, the Council of State and the Constitutional Court are the three highest courts which have the competence to request advisory opinions from the ECtHR. However, the relation between these three domestic supreme courts and their relationship with the Court of Justice of the European Union seem to be decisive for the central question of this presentation.

Alexandros Lympikis (KU Leuven)
Urgent and expedited preliminary reference procedures as an example of fundamental rights prioritization by the CJEU – some reflections on recent case law

Expedited and urgent procedures share a common origin in Article 104a of the Rules of Procedure of 2000 (accelerated procedures), being separated after the Treaty of Lisbon. The expedited procedure continued applying to all references needing to be dealt with "in a short period of time". Simultaneously, an urgent procedure was established for AFSJ references showing a "degree of urgency". Both of these procedures consider the detrimental impact of a delay in the delivery of a judgment on the rights of litigants in front of the national courts. However, the criteria for triggering each procedure remain unclear, even as the requests for their application increase. Originally, urgent references and expedited procedures would occasionally address different concerns. For example, while the urgent procedure would be limited to instances where certain fundamental rights were at stake (e.g. continuous deprivation of liberty), the expedited procedure would also apply to references with wider public interest concerns (e.g. stability of the Eurozone-Pringle). Contrary to what was happening in the past, today only cases involving fundamental rights of litigants seem to justify the expedited procedure. Based on selected case law, the present contribution will cast light on how the expedited and urgent procedures have been used in the past five years and the possible convergence of the criteria for their application. Answers to these questions can contribute to the ongoing dialogue on defining the preliminary reference procedure as a fundamental rights-oriented procedure.

Naz Yilancioglu (Maastricht University)
An institutional perspective into the execution of ECtHR judgments: The UK as an example of the interactive system

Findings of violation by the European Court of Human Rights (ECtHR) require execution by the relevant State, with the aim is to terminate existing violations and prevent future instances. Depending on the type of remedy required to execute the decision, such as policy change or legislative amendment, one or more national institutions may be involved in the execution process. This often requires diverse forms of collaboration which can involve ministries and departments, as well as other branches of government.

This research develops a typology based on the institutional design of the governmental branches involved in the execution process, identifying three distinct systems: traditional, interactive, and committee-based. In the traditional system, used in most Member States, the government takes the lead and manages the execution process without the formal participation of other branches of government. In the interactive system, execution is not solely the responsibility of the government: Other branches of the state can become involved in the process such as parliaments and their committees to varying degrees. In the committee-based system, a special committee is established with the purpose of determining appropriate execution measures and monitoring their implementation.

This presentation focuses on the United Kingdom's (UK) execution system for ECtHR judgments, as an example of an interactive system. It pays particular attention to the interaction between the Ministry of Justice and the parliamentary subcommittee, the

Joint Committee on Human Rights, and explores the UK's interactive execution framework through the roles of key institutions, their operational methods, and their interactions with other actors in the execution process.