

Remedies for human rights violations by the European Union

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In the current social, political and economic climate, the European Union has become a global actor. The rapid development of EU policies permeates every sector of society and economic activity, from environmental standards, to competition regulation or economic measures with effects on individuals. Simultaneously, the political and economic crises of the last decade or so, followed by the United Kingdom's departure from the Union and the coronavirus pandemic, were sequential shocks that have challenged the Union's existence, casting doubts as to the organisation's credibility and democracy.

It is possible that, as with any exercise of authority, EU action may at times transgress the limits set by human rights standards, including the EU Charter of Fundamental Rights and international law. The risk is evident in policy areas like the Union's sanctions against persons in the framework of its Common Foreign and Security Policy, the management of the refugee crisis through the external borders policy, issues of police cooperation, as well as judicial and prosecution cooperation. Where EU action is related to the freezing of an individual's assets, the cutting of their deposits, or the execution of an arrest warrant them, guarantees for the affected person's rights must exist. If the rights have been violated, a remedy must be provided.

However, while the Union claims to abide by human rights standards, and also passes legislation and acts that aim at the protection of human rights at Member State level, the legal regime for remedies for human rights violations committed by the EU and the degree of its engagement by international human rights standards, is yet unclear. For example, while the EU has its own Charter of Fundamental Rights, it is not a party to any multilateral human rights treaty apart from the United Nations Convention on the Rights of Persons with Disabilities.

The overarching theme of this book is the vertical relationship between EU institutions and affected individuals. This book examines how the Union's legal responsibility for violations of human rights may be engaged effectively, with the purpose of achieving the substantive remedying of the violation and the rectification of the harm suffered by the victim. The approach is to take a path starting with the problems observed, leading towards the solutions that may be

applied. This methodology allows readers to familiarise themselves with the main topics that dominate the EU human rights discourse, before exploring more nuanced alternatives.

In this spirit, Part I begins by explaining the most substantial deficits in the applicable framework for the challenge of Union action on human rights grounds. Firstly, it explores the non-fulfilment of the EU's accession to the European Convention on Human Rights and the limited effectiveness the procedure of annulment of EU acts has for individual applicants. Furthermore, it delves into legal alternatives such as the doctrine of direct effect, preliminary references, the plea of illegality and complaints mechanisms for specialised bodies or agencies of the EU.

The deficit that exists is simple to visualise. Let us imagine that a person wishes to challenge an action, enforced by an authority of an EU Member State. They claim it has led to the deprivation of their property and disrupted their family life. The competent authority of the Member State had no option but to enforce an EU obligation, and the case is argued until that Member State's highest court. The Member State is also a party to the European Convention of Human Rights, so this person considers a case before the European Court of Human Rights for the violation of their rights to property and family life. Through this application, they may seek vindication of their rights, restitution and just satisfaction for the damage sustained. However, as the EU is not party to the Convention, the European Court of Human Rights, will have simply no capacity to examine the compatibility of the EU act that triggered the alleged violation and they realise that they have encountered an impasse.

The same person therefore considers challenging the same EU act directly before the Court of Justice of the European Union. They believe that the act was contrary to their rights to property and family life, protected within the EU legal order, and thus must be annulled. Alas; things are not so simple. If the EU act was not directed specifically to this applicant, the odds are that they will have no standing to challenge it.

They therefore have to look into other alternatives. They examine several options; one could be to file a case in a national court and bring up the issue of compatibility of the action with fundamental rights, through a preliminary reference. Another possibility is to continue with their

efforts before the Court of Justice of the European Union, and where the measure is of general application, incidentally claim its illegality.

As these scenarios are legally intricate, a simpler alternative is to examine whether the action in question originates from a specialised agency or body of the Union. In that case, they may use that body or agency's independent complaint procedures instead of going to court, provided that such a mechanism is indeed in place. That is not always the case.

Part II concentrates on the important, substantive remedy of compensation, through the application of the principle of non-contractual liability. This issue is analysed specifically vis-à-vis human rights cases, while also making a comparison with national law and the jurisprudence of the European Court of Human Rights.

In this scenario, the person in question opts for claiming damages before the Court of Justice of the European Union for harm they suffered due to the act of the Union's institutions or servants. They claim that the damage caused is the deprivation of property and the consequent violation of their private and family life. To that end, they must prove that the action in question has been unlawful, and that it has caused the alleged identifiable damage. Their claim may be that the violation of their right entitles them to compensation as such. Again however, complex legal questions inevitably arise. Can the violation of a right be identifiable damage? If that is true, are all acts with the ultimate effect of disproportionately limiting a fundamental right be unlawful on the basis of their consequences? If the violation of a right is in itself damage, how can it be quantified to award compensation? This Part addresses all of the above questions to assess whether non-contractual liability is fertile ground for obtaining a remedy at EU level.

Part III goes a step beyond the EU's legal system. It examines the possibility of obtaining remedies for violations of human rights by the EU in the sphere of international law, both as an alternative to the EU's legal system as well as potential additional protection.

Under this framework, the potential litigant is determined to hold the EU accountable at an international level for the act that caused the alleged violation of their human rights. After all, the EU is an international organisation founded on the principles of international law. During such an effort, they will encounter even greater obstacles than within the EU's legal system. Given

that the EU is not party to a multilateral human rights instrument except the Convention of the Rights of Persons with Disabilities, a significant problem is the identification of other international human rights norms may bind the EU when acting as an international legal person. Is it possible that certain customary international law rules apply to all legal persons be they state or non-state entities, including the EU? In that case, before which international legal forum can a non-state entity be held responsible to provide remedies for violations of rights guaranteed by customary international law? If such a procedure is possible, what are the modalities of establishing responsibility and obtaining a remedy? By addressing these theoretical yet substantial matters, the book also touches on another topical issue; the question of human rights obligations of non-state entities in an era of institutionalisation of the international community.

Addressing the issues above is necessary, as academic discourse has often steered clear of the question of enforcement of human rights norms vis-à-vis the EU. Instead, focus has been diachronically been put on human rights as part of the EU legal order. Rather, the book takes a more pragmatic approach. The book aims to be, apart from a contribution to the academic discourse surrounding the relationship between the EU and human rights, a detailed and informed handbook for the individual or the advocate who in effect encounters the difficult challenge of bringing a claim against an EU organ for violating human rights.

In that framework, it contains a comprehensive analysis of substantial and procedural, EU and international, law. The book includes references to a significant body of case law and explains methods of initiating procedures and obtaining interlocutory relief before courts or extrajudicial bodies. It also addresses the thorny subject of enforcing remedies and executing judgments of the competent courts or bodies, following findings of human rights violations. The institutions examined include, *inter alia*, the Court of Justice of the European Union, the European Court of Human Rights as well as specialised complaints procedures such as the EULEX Panel for the EU's Mission in Kosovo. Consequently, the book maps out various options available for bringing a human rights claim against the EU, while assessing the remit, role and effectiveness of the applicable rules in each case.

The content of the research may be particularly useful for policy makers such as legislators and other important stake-holders in the decision-making procedure, including experts, NGOs, or

even human rights activists. In addition, the book does not only state the conclusions reached throughout the research – which are, inevitably, that important deficits exist for access to justice for individual applicants. The book also suggests solutions to problems that are identified. For example, the thesis strongly advocates the accession of the EU to the European Convention on Human Rights, as well as the creation of a clear and binding system of remedies for international organisations within international law.

The published book will be available to be read by researchers, students, academics and practitioners as well. It is therefore possible for the thesis to be available at libraries at Universities, courts and government institutions across the European Union. This book can be introduced to university libraries while also form part of academic curriculum in undergraduate or postgraduate degrees, due to its comprehensive approach to significant European Union law questions.