



## **OVERVIEW PAPER**

**‘EU Policy Perspectives’ seminar series  
Clingendael European Studies programme (CESP)**

### ***Ensuring rights for all in Europe: Challenges for the Council of Europe and the European Union***

**The Hague, Clingendael, 3<sup>rd</sup> November 2009**

Author: Sarah Wolff<sup>1</sup>

This paper introduces the issues on the agenda of the seminar “Ensuring rights for all in Europe: Challenges for the Council of Europe and the European Union”. This seminar fits in a series of events celebrating the 60<sup>th</sup> anniversary of the Council of Europe.

Since the end of the Cold War, the Council of Europe (CoE) and the European Union (EU) have contributed tremendously to the development and the consolidation of human rights, the rule of law and democracy in Europe. At the same time, they have both extended their membership and are confronted to new challenges on their respective agendas. Contemporary developments in cultural, economic, political, and social fields have indeed given rise to new rights, which challenge both organisations and their institutional capacities.

In this context, this seminar is an opportunity to reflect upon the CoE and the EU common priorities and synergies on how best to ensure human rights, rule of law and democracy for all in the Europe of tomorrow.

In order to focus the discussion, this overview paper introduces considerations on the roles of both the CoE and the EU, and their interaction in three specific dimensions. First, taking the case of the fight against racism and discrimination, this paper ponders ways to enhance cooperation in the future. Then, the paper raises the issue of monitoring of the rule of law as a prerequisite for the European Union Area of Freedom, Security and Justice. With the Stockholm programme, which will define the EU priorities in the field of Justice and Home Affairs (JHA) for the next five years, the paper looks in particular at how the CoE monitoring system will help strengthening trust amongst EU member states’ judicial systems. Finally, considering the pan-European scope of the CoE, the last part of the paper looks at the interaction between CoE membership and EU’s external relations.

---

<sup>1</sup> Sarah Wolff is a Research Fellow at the Clingendael European Studies Programme. The author is thankful to Mirte van den Berge, Elke Koning, Suzan Nollen and Maarten Lak for their valuable comments on earlier drafts.

## Introduction - Challenges for Human Rights, Democracy and Rule of Law in Europe

While the CoE has been a pioneer and remains a worldwide reference in the field of human rights, democracy and rule of law, it is only more recently that the EU has started to promote such norms internally and abroad. The CoE *acquis* constitutes an important source of inspiration for EU's internalisation of and commitments to human rights, democratisation and rule of law. Active cooperation between the CoE and the EU is taking place through joint projects in the field and on a daily basis, and has become more intense since the 2005 Warsaw summit.<sup>2</sup>

Sixty years after the creation of the CoE, both the CoE and the EU are facing particular and common challenges, and in the midst of a renewed search for EU identity, it is critical to take stock of the progresses achieved so far in Europe, and to chart future challenges.

*The first challenge is linked to human rights in Europe, where a lot remains to be done.* Breaches of human rights are still an acute reality in the EU. Counter-terrorism measures with risks related to ill-treatment on return, inadequate safeguards in detention, and curbs on freedom of expression and the right to privacy are amongst key concerns. Policies in the field of migration and asylum, as well as racist and xenophobic incidents and policies affecting the Roma, the Sinti, Jewish and Muslim populations as well as migrants, are other worrisome areas.<sup>3</sup> Similar issues have been regularly pointed out in the context of the CoE.

*A second challenge is that the CoE has become victim of its own success.* The functioning of the European Court of Human Rights (ECtHR) that is ill-equipped to cope with its ever growing workload, is clearly at stake. Over the 2003-2009 period, the number of cases awaiting processing has constantly increased and has now reached over a 100 000 pending cases.<sup>4</sup> In order to strengthen the capacity and improve the efficiency of the Court, Protocol 14 to the European Convention of Human Rights (ECHR) would help the Court to decrease its workload by introducing a number of reform measures - among which filter mechanisms with a single-judge formation - to decide upon the admissibility of cases. The entering into force of the protocol has nonetheless been blocked by the Russian Federation's refusal to ratify it.

Furthermore, the CoE is suffering from a lack of commitment of its member states. The low level of participation of foreign affairs ministers in the ministerial sessions of the Committee of Ministers, the lack of implementation of the resolutions and recommendations of the Parliamentary Assembly of the Council of Europe (PACE), the reluctance among the member states to sign and ratify the CoE's legal instruments as well as a tendency to minimise the

---

<sup>2</sup> Cooperation between the CoE and the EU was formalised by an exchange of letters that took place in 1987. Twice a year, quadripartite meetings gathering the EU Presidency, the European Commission, the Chairman and the Secretary General of the Council of Europe are held. On 10-11 May 2007, a Memorandum of Understanding between CoE and EU was signed. The EU and the CoE cooperate through joint programmes. The latter represented over 20% of the CoE's programme of activities in 2008.

<sup>3</sup> Human Rights Watch (2009). *World Report 2009*. Available at <http://www.hrw.org/world-report-2009>

<sup>4</sup> Opinion 272 (2009). Parliamentary Assembly of the Council of Europe Budgets of the Council of Europe for the financial year 2010. Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/EOP1272.htm>

importance of the different independent monitoring mechanisms point to (future) difficulties that need to be addressed.<sup>5</sup>

***Lastly, the combination of EU's institutional debate and the loss of EU's influence on the global human rights' agenda is a third challenge to consider.*** The ratification of the Lisbon Treaty is indeed no guarantee that institutional challenges will be overcome. New treaty changes will influence EU's human rights policy, both internally and externally, with the accession of the Union to the ECHR. At the same time, the EU as a major human rights' international actor, has seen its position in the UN weakened. A European Council on Foreign Relations' report<sup>6</sup> explains that a majority of its former allies are beginning to challenge EU's vision of multilateralism and human rights. China and Russia, for instance, have been able to monopolise the global human rights agenda, while the EU has failed to seize the momentum provided by the engagement of new Obama administration with multilateralism and human rights.

With those challenges in mind, the paper addresses the specific issues of the fight against racism and discrimination (1), the monitoring the rule of law in the EU's Area of Freedom Security and Justice (2), and finally the interaction between EU's external relations and CoE non-EU members (3).

### **1. Fighting racism and discrimination: a litmus test for the CoE, the EU and their member states.**

Fighting racism and discrimination is a litmus test for any human rights policy. Because racism denies the principle of equality in dignity and rights to individuals, and involves discrimination, it finds a fundamental place in the CoE and EU actions. This paper finds that despite the existence of numerous mechanisms, European decision-makers should strengthen the fight against racism and discrimination. At EU level, it appears that political consensus is not always easy to reach. Then, there is clearly a gap between the monitoring activities of the CoE and the EU and weak follow-up mechanisms.

In the field of the fight against racism and discrimination, both the CoE<sup>7</sup> and the EU have at their disposal a wide range of constitutional provisions,<sup>8</sup> monitoring systems,<sup>9</sup> legislative tools<sup>10</sup> and expert networks.

***Despite those instruments, racism and discrimination is a daily feature of European societies.*** In its 2009 Annual Report the ECRI pointed out that Islamophobia, manifestations of anti-Semitism, anti-Gypsism, anti-black racism remained worrying in the member states of

---

<sup>5</sup> Parliamentary Assembly of the Council of Europe (2009). *The future of the Council of Europe in the light of its 60 years of experience*. Resolution 1689 (2009).

<sup>6</sup> Gowan, Ri. And F. Brantner (2009). *The EU and Human Rights at the UN- 2009 Review*. European Council on Foreign relations. Available at [http://ecfr.3cdn.net/c85a326a9956fc4ded\\_qhm6vaacc.pdf](http://ecfr.3cdn.net/c85a326a9956fc4ded_qhm6vaacc.pdf)

<sup>7</sup> The CoE was a pioneer in prohibiting racism and racist discrimination with article 14 of the European Convention on Human Rights (ECHR). The European Commission against Racism and Intolerance (ECRI) was set up in 1997, following the Vienna Declaration and became autonomous in 2002, thus consolidating its role as an independent human rights monitoring mechanism specialised in questions relating to racism and intolerance.

<sup>8</sup> ECHR, Treaty on the European Union and Charter on Fundamental Rights.

<sup>9</sup> ECRI and the EU Fundamental Rights Agency (FRA).

<sup>10</sup> EU Directives and Framework Decisions.

the CoE. Negative feelings are also present against migrants, refugees and asylum-seekers, and the fight against terrorism has contributed to increased levels of racist prejudices.<sup>11</sup>

***An analysis of EU's legal tools shows that political consensus on issues such as the criminalisation of racism is sometimes difficult to reach.*** The EU became only recently involved in the fight against discrimination, which finds its legal basis in article 29 of the Treaty on the EU and article 13 of the Treaty establishing the European Community. Active political and administrative promotion of the fight against racism and discrimination is constrained by political considerations, different national understandings of normative concepts as well as by the pillar structure.

Such difficulties can be illustrated both at an internal level, and when the EU is acting on the international scene. Internally, the adoption of a framework decision to combat racism in Europe was delayed by a series of constitutional domestic considerations, amongst which the freedom of speech. Despite the introduction of a prohibition of racial discrimination with the 2000 Race Equality directive,<sup>12</sup> it took indeed more than seven years to EU member states to approximate their respective criminal law provisions to combat racist and xenophobic offences.

Similarly, at an international level, the preparations leading up to the 2009 Durban Review Conference, aiming at assessing the progress made since the UN 2001 Durban Conference in the field of global anti-racism measures, revealed important splits amongst EU Member states. The final decision of the US administration not to take part in the conference, threw confusion in the EU; Germany, Italy and The Netherlands deciding to join the boycott of the conference. This confused situation has highlighted the lack of a common EU strategy.<sup>13</sup>

***Lastly, a common problem to both institutions is that monitoring reports are only in a few cases used by political bodies and lack the necessary follow-up mechanisms. Criticising each other domestic situations' is politically sensitive.*** This problem can be illustrated, at EU level, by the 2008 Italian "security package" which introduces, amongst other measures, the ability to conduct a census of Roma and Sinti communities. Increased police powers were conferred to Italian prefects, amongst which the ability to collect Roma and Sinti fingerprints, including those of minors.<sup>14</sup> While all major human rights actors raised criticisms against these measures, amongst which the European Parliament,<sup>15</sup> the FRA<sup>16</sup> and the ECRI<sup>17</sup>, the European Commission remained only "very timid"<sup>18</sup> on this issue.<sup>19</sup> Criticism was voiced in

---

<sup>11</sup> ECRI (2009). *Annual Report on ECRI's Activities covering the period from 1<sup>st</sup> January to 31<sup>st</sup> December 2008*. 40p. Available at [http://www.coe.int/t/dghl/monitoring/ecri/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp)

<sup>12</sup> Council of the EU (2000). *Council Directive of 29 June 2000, implementing the principle of equal treatment on grounds of racial and ethnic origin*. Official Journal L 180 of 19.07.2000.

<sup>13</sup> Gowan, Ri. And F. Brantner (2009). *Ibid*.

<sup>14</sup> Merlino, M. (2009). "The Italian (In)Security Package. Security vs. Rule of Law and Fundamental Rights in the EU." *CEPS Research Paper*, No.14.

<sup>15</sup> European Parliament (2008). *Resolution of 10 July 2008 on the census of the Roma on the basis of ethnicity in Italy*, 2008/0361.

<sup>16</sup> Fundamental Rights Agency(2008). *Incident Report – Violent attacks against Roma in the Ponticelli district of Naples*, European Union, Italy, 2008.

<sup>17</sup> ECRI (2008). *Statement on recent events affecting Roma and immigrants in Italy*. In this statement, the ECRI reminded the Italian authorities to ensure that in respect of Roma and immigrants the rule of law was maintained and the principle of non-discrimination strictly observed.

Available at [http://www.coe.int/t/dghl/monitoring/ecri/library/PressReleases/53-20\\_06\\_2008\\_en.asp](http://www.coe.int/t/dghl/monitoring/ecri/library/PressReleases/53-20_06_2008_en.asp)

<sup>18</sup> Criticism voiced by former European Commission and Italian Radical Emma Bonino <http://www.euractiv.com/en/eu-elections/emma-bonino-rule-law-italy-berlusconi/article-182834>

particular by Thomas Hammarberg, Human Rights Commissioner, who paid two visits to Italy in 2008 and in 2009. Notwithstanding the “continuation of an intolerant climate vis-à-vis Roma and Sinti”, the Commissioner expressed his deep concern regarding the census operations in Roma and Sinti settlements.

Pan-European efforts and means to combat racism and discrimination need to be strengthened. Despite the existence of legal frameworks or national action plans, implementation remains uneven. With that objective in mind, CoE’s monitoring bodies, like the ECRI and the Human Rights Commissioner, are strategic allies for ensuring respect of such rights in EU member states. Future prospects of cooperation should include a reflection about follow-up mechanisms to the monitoring of racism and discrimination in Europe. At the same time, discussion should be taken forward on how can the EU and the CoE work more closely together in the light of the future international human rights agenda.

### Questions for discussion

- How to best ensure complementarity between CoE and the EU in order to fight racism in Europe in the future?
- Is there a role for the CoE to assess the HR performance by EU member states when the EU cannot act for political reasons?
- How will the possible accession of the EU to the ECHR affect concretely the fight against racism and discrimination in Europe?
- How can the CoE and the EU best cooperate to take the lead in the global debate on the fight against racism and discrimination?

## 2. Fostering a “rule of law culture” in the EU’s Area of Freedom, Security and Justice: what role for the CoE?

Another area of discussion during the seminar, where synergies between the CoE and the EU will be investigated, is the future design of rule of law mechanisms within the EU’s Area of Freedom, Security and Justice. Such a dynamic policy field calls for reflection as to the role of the CoE’s in the debate over monitoring mechanisms for the EU’s third pillar.

Assessing the achievements of The Hague programme, it emerges that judicial cooperation is impaired by a lack of trust among EU member states and weak implementation. While the principle of mutual recognition, implying mutual trust amongst the EU judicial systems, is at the heart of judicial cooperation, there has been little consideration for its underlying principle: the rule of law.<sup>20</sup> The rule of law is not only crucial to boost trust amongst judicial systems, but also to enforce citizens’ rights and empower them on the entire EU territory. It is

---

<sup>19</sup> The European Commission initially questioned the Roma census in a letter from DG Jonathan Faull to the Italian government, but finally backed the Italian legislative measures. Some observers hold nonetheless that the Italian Emergency Law violates the Data protection directive 95/46/EC by collecting ethnic data, breaches article 3, 8 and 14 of the ECHR as well as the Racial Equality Directive. See for further details European Roma Rights Centre (ERRC), osservAzione and the Open Society Institute. *Memorandum to the European Commission. Violations of EC Law and the Fundamental Rights of Roma and Sinti by the Italian Government in the implementation of the census in “nomad camps”*. 4 May 2009.

<sup>20</sup> p.1 Alegre, S., I. Ivanova, et al. (2009). *Safeguarding the Rule of Law in an Enlarged EU. The cases of Bulgaria and Romania*. CEPS Special Report. April 2009.

only when the rule of law is guaranteed in practice, that JHA policies will gain more legitimacy in the eyes of European citizens,<sup>21</sup> and when promoting the rule of law abroad.<sup>22</sup>

***In Europe, there are already several mechanisms to monitor the rule of law.*** Within the CoE structure there are numerous bodies which perform some monitoring activities.<sup>23</sup> At the moment, internal coordination of the CoE monitoring mechanisms is ensured through systematic communication of the timetable of planned visits by the different bodies and through regular meetings between the Office of the Human Rights Commissioner and the secretariats of the other monitoring mechanisms.<sup>24</sup> The CoE is currently discussing how to further improve this internal coordination. Similarly, the EU has developed some rule of law mechanisms related to JHA, such as the Cooperation and Verification Mechanisms which apply to Bulgaria and Romania and the peer evaluation mechanisms included for instance in the European Arrest Warrant (EAW).<sup>25</sup>

***In the meantime the debate surrounding the Stockholm programme has included new proposals to improve the quality of the rule of law in the third pillar.*** In its contribution to the Stockholm programme, the Dutch government proposed to strengthen evaluation activities when it comes to judicial cooperation in EU criminal matters. The scope of this evaluation mechanism would not only focus on the implementation of EU legislation, but also on institutional and procedural matters such as “length of procedures, access to justice, treatment in custody, and fighting corruption among judicial and other public officials”. The evaluation would be conducted independently, but anchored within the European Commission and within existing monitoring systems like those of the CoE. Lastly, this evaluation would need to be reinforced by some follow-up mechanisms.<sup>26</sup>

This analysis is shared by the European Parliament. It recommended to set up “an objective, impartial, transparent, comprehensive, horizontal and continuous monitoring and evaluation system of the implementation of EU policies and legal instruments” in the third pillar, in cooperation with the relevant CoE committees. This system would be modelled on a peer-evaluation mechanism and produce reports every year.<sup>27</sup>

The Swedish presidency has also taken on board this issue and insisted on the need to joining the CoE and the EU forces in promoting the rule of law in Europe. A possible way to go

---

<sup>21</sup> The Netherlands (2008). *The Netherlands contribution to the Future Group*. 27 March 2008.

<sup>22</sup> Rule of law promotion abroad is indeed sometimes faced with dilemmas, see for instance Wolff, S. (2009) "Constraints on the promotion of the rule of law in Egypt: insights from the 2005 judges' revolt". *Democratization*, Volume 16, Issue 1 February 2009, pp 100 – 118.

<sup>23</sup> The ECtHR, the Committee of Ministers, the Parliamentary Assembly, the Commissioner for Human Rights, the Venice Commission, the Committee for the Efficiency of Justice (CEPEJ), the Group of States against Corruption (GRECO), and Moneyval.

<sup>24</sup> Council of Europe (2009). *Council of Ministers. Promoting Greater Synergies between Monitoring Mechanisms*. 1068 Meeting, 21 October 2009. 14 September 2009. Available at <https://wcd.coe.int/ViewDoc.jsp?id=1501069&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

<sup>25</sup> Other monitoring mechanisms include the Justice Forum which brings together European practitioners in the field of EU criminal justice, the Office de Lutte Anti-Fraude (OLAF), the FRA, the European Parliament via its democratic oversight, the EU Network of Independent Experts on Fundamental Rights and most importantly the European Court of Justice.

<sup>26</sup> These mechanisms are explained in detail in European Network of Councils for the Judiciary (2009). *Mutual Confidence Report 2008-2009*. Available at [www.drb.de/.../europa\\_encj\\_final\\_report\\_mutual\\_confidence.pdf](http://www.drb.de/.../europa_encj_final_report_mutual_confidence.pdf)

<sup>27</sup> European Parliament (2009). *Recommendation of 7 May 2009 to the Council on development of an EU criminal justice area*. 2009/2012(INI).



forward in that field, is, as proposed by Alegre, for the CoE and the EU to engage in a dialogue on enhanced cooperation in the field of rule of law where the EU level should use CoE data, and engage in regular exchange with the bodies of the CoE, that go beyond the recognition of its *acquis*.<sup>28</sup> There is indeed no single EU standard against which it is possible to benchmark what member states expect from each other's judicial systems. In addition, one must take into account the risks of duplication, "reporting fatigue" and "administrative burden".<sup>29</sup>

The Stockholm Programme will cover many aspects which are of direct relevance for the monitoring bodies of the CoE. The most significant proposals concern issues dealing with diversity and non-discrimination (for ECRI and the Framework Convention on National Minorities), the fight against money laundering and the financing of terrorism (with Moneyval), the fight against corruption (with GRECO), or trafficking of human beings (GRETA). Given this existing CoE *acquis*, the CoE Secretary General has suggested to explore further avenues for cooperation under the Stockholm programme: an enhanced involvement of the European Community in the CoE's monitoring, an institutional readiness of the CoE mechanisms to take on board EU concerns, and an articulation of competencies based on respective strengths, to develop structured and well established synergies.<sup>30</sup>

Given those issues, and the fact that there is a reluctance of member states to criticise each other's internal situations, the discussion could contemplate what synergies between the CoE and the EU could be found in order to monitor the rule of law in the EU's Area of Freedom Security and Justice.

### Questions for discussion

- How can the CoE and the EU best work together to spread this "rule of law" culture?
- Could direct channels of communication be established between the CoE monitoring bodies and their counterparts in the EU, especially when it comes to the Third Pillar?
- What would be the role of the Fundamental Rights Agency in this enhanced cooperation?
- How can governments' compliance with the monitoring bodies be ensured? Do we need to envisage some financial sanctions, like for Bulgaria under the CVM mechanism, or any other type of sanction (or incentive) to ensure implementation?

### 3. Enlarging the EU and communicating with the neighbours: a Council of Europe perspective.

This last section investigates the interaction between CoE membership and EU's external relations. Looking at the case of Turkey, it questions the impact of EU-Turkey accession negotiations on the CoE's agenda. Then, turning to Russia, and the limited EU's political leverage on its human rights policy, it contemplates future ways of improving cooperation between the CoE and the EU vis-à-vis partners like Turkey and Russia.

<sup>28</sup> p. 13 Alegre, Ivanova, *et al. Safeguarding the Rule of Law in an Enlarged EU. The cases of Bulgaria and Romania*.

<sup>29</sup> p. 5. Alegre, Ivanova, *et al. Safeguarding the Rule of Law in an Enlarged EU. The cases of Bulgaria and Romania*.

<sup>30</sup> See Appendix "Extract of the Secretary General's contribution to the Stockholm Programme project". Council of Europe (2009). *Council of Ministers. Promoting Greater Synergies between Monitoring Mechanisms. Ibid.*

In its external relations, the EU is portrayed as an active promoter of human rights and rule of law. Conditionality<sup>31</sup> is used in the agreements concluded with third countries where CoE *acquis* is often listed (i.e. European Neighbourhood Policy). This conditionality has been most successful at the time of the Eastern enlargement, when the EU asked ex-Soviet countries to ratify the ECHR.<sup>32</sup>

Currently, EU's closest neighbours, such as Southern Caucasus, the Western Balkans or even the Russian Federation and Turkey are all CoE member states. Given the EU concern to stabilise its neighbourhood and to cooperate with Russia, which is a major strategic partner, it is therefore pertinent to look at *how the EU's external relations and conditionality with third countries influence the work of the CoE*.

While **Turkey** has been a member of the CoE since 1949, its negotiations for EU accession were launched in 2005 by the European Council. The EU membership perspective has enabled some political leverage within the CoE as well for pursuing reforms.<sup>33</sup> At the moment, the discussions over Turkish accession have been slowed down, due to negative statements of European leaders against such a membership. In Turkey also there has been a dramatic drop in the support of citizens and a lack of willingness of the government to proceed with reforms. According to the Independent Commission, issues such as the unsolved Cypriot conflict, rights of the Kurdish minority and other reforms to strengthen human rights and the rule of law need to be quickly addressed by the AKP, while the EU should stick to its own commitment to Turkish accession.<sup>34</sup> In this complex picture, it is therefore interesting to contemplate how such a longer term rejection of EU accession of Turkey would affect the CoE, and current issues regarding the execution of Strasbourg judgements.

Contrary to Turkey, EU's political leverage towards **Russia** seems limited. Russia is averse to EU's conditionality, and is quite reluctant towards EU's activism in their common neighbourhood. It is a vital partner for the EU, not only from an energy point of view, but also when it comes to tensions and conflicts in Southern Caucasus or in the Middle East. Within the UN framework, Russia has become part of this group of countries that supported the EU human rights positions less than 35% of the time. In 2009, the EU was outvoted in the Human Rights Council on the Sri Lanka issue, mainly due to China and Russia's strategies.<sup>35</sup> One of the main conclusions was that the EU might have under-estimated the necessity to do bilateral diplomacy with those two countries in order to win their support.

The CoE has been described as "the one official organization that was consistently critical on Russia's role in Chechnya" and remains the only body that posted some observers in 2000-

---

<sup>31</sup> Conditionality refers to the ability of the EU to condition the conclusion of agreements with third countries to the respect of economic and/or political conditions. Political conditionality has been extensively developed with the respect of the Copenhagen criteria for candidate countries. In this context we refer to political conditionality and the ability of the EU to diffuse via its conditionality some norms in the field of human rights, democracy and rule of law.

<sup>32</sup> p. 681 Keller, Helen and Alexander Stone Sweet (2008). *A Europe of rights: the impact of the ECHR on national legal systems*. Oxford: Oxford University Press.

<sup>33</sup> Background interviews with CoE official, 8 and 9 October 2009, Strasbourg.

<sup>34</sup> The Independent Commission on Turkey (2009). *Turkey in Europe. Breaking the vicious circle*. Second Report, September 2009. Available at <http://www.independentcommissiononturkey.org/>

<sup>35</sup> Gowan, Ri. And F. Brantner (2009). *Ibid*.



2003 during the second armed conflict in Chechnya.<sup>36</sup> During the conflict, it appears though that the ‘human rights watchdog’ function was fulfilled by the legislative bodies of the CoE and of the EU, rather than by ministers. The Strasbourg Court is also a crucial recourse for Russian citizens.<sup>37</sup> Faced with its difficulties to exert political leverage towards Russia, it is therefore interesting to see how can the CoE and the EU work together to build a human rights diplomacy towards Russia.

## Questions for discussion

- How does the perspective of EU membership affect the Council of Europe’s work with its members?
- How do the CoE and the EU coordinate their human rights policy towards future EU member states and neighbouring countries? I.e. Turkey? What of Russia’s position, when it will be left with fewer and fewer non-EU CoE states?
- How would a receding perspective or even rejection of EU-accession of Turkey affect the CoE?

## Future prospects

The adoption of the Treaty of Lisbon by Ireland provides a new incentive for human rights protection in Europe. If ratified by the 27 member states, the Treaty of Lisbon would allow the EU accession to the European Convention on Human Rights and then bind EU member states and EU institutions to the Charter on Fundamental Rights and Freedoms. Despite many legal uncertainties,<sup>38</sup> the accession of the Union to the ECHR could provide a unique opportunity for overcoming the fragmentation of the various human rights regimes that are in force in Europe. Beyond institutional turf wars the main ambition of both the CoE and the EU should remain the concern of how to best ensuring rights for all in the Europe of tomorrow.

One of the key questions that might affect future cooperation is whether the EU will decide on the ultimate size of its human rights agenda. The debate around the creation of a post of a new EU Commissioner on Justice, Fundamental Rights and Civil Liberties demonstrates that the EU’s future involvement in that field will expand.<sup>39</sup> Nonetheless, given the legitimacy crisis faced by the EU, a ‘thick’ human rights agenda could run the risk of being disconnected from member states’ individual constitutional heritage and values. The fear of seeing emerging an EU human rights institution for instance could therefore be “rightly criticised for being

<sup>36</sup> p. 274 Jack, A. (2005). *Inside Putin's Russia: Can There Be Reform without Democracy?* Oxford, Oxford University Press.384

<sup>37</sup> As of December 2007, Russia, Turkey, Romania and Ukraine accounted for 55% of the total pending cases, amongst which 26% for Russia only.

<sup>38</sup> The Treaty of Lisbon allows the Union to adhere to the ECHR. This must be ratified by the Council of the EU by unanimity and then ratified by all the Member states (article 6.2 TFEU and Protocol 5). Similarly the CoE would have to adapt the ECHR, since at present only states can be party to the Convention.

See also Jacobs, F. "The European Convention on Human Rights, the EU Charter of Fundamental Rights and the European Court of Justice. The impact of European Union accession to the European Convention on Human Rights", in: Ingolf Pernice/Juliane Kokott/Cheryl Saunders (eds.): *The Future of the European Judicial System in a Comparative Perspective*.(Nomos 2006)

<sup>39</sup> Speculations around the creation of this post are linked to a wider political bargain since Mr. Verhofstadt, leader of the ALDE group, made his support to the candidacy of Mr. Barroso conditional upon the creation of such a post. A post of Commissioner on internal affairs and migration could also be established. See Euractiv (2009). *Verhofstadt lists conditions for Barroso II*. 15 July 2009.

undemocratic and elitist in nature.”<sup>40</sup> Due to the complex institutional set-up of the EU and its inherent democratic deficit, the CoE should be therefore be considered as a natural ally to tackle those internal challenges, while contributing to the stabilisation of the EU’s neighbourhood.

Finally, it remains to be seen whether further recommendations of the Juncker report such as the systematic consultation of the CoE when new EU legislation is being drafted, the idea of a pan-European legal and judicial area, increased involvement of EU foreign ministers or the issue of the CoE’s resources will be taken forward.<sup>41</sup>

---

<sup>40</sup> p. 24. Brosig, Malte (2006) *Human Rights in Europe. A Fragmented Regime?* Frankfurt am Main: Peter Lang.336p.

<sup>41</sup> Juncker, Jean-Claude (2004). *Council of Europe-European Union: ‘A Sole Ambition for the European Continent’*.