

No Right Without A Remedy

Making EU Fundamental Rights Enforceable

Dr. Melanie Fink
APART-GSK Fellow at the Central European University (Vienna)

AN OVERVIEW

Everyone would agree that the EU should be accountable for fundamental rights violations it commits. However, individuals often lack judicial avenues to invoke their rights against the EU. The reason is that the EU has transformed, but its system of remedies has not.

This project identifies shortcomings of the EU system of remedies, provides solutions to improve it, and explores possibilities for reform through a new fundamental rights complaints procedure. In doing so, it kicks off a conceptual debate on a complete reform of a remedies system the EU has 'outgrown' and lays the foundation for making EU fundamental rights practically useful to those they seek to protect.

THE PROBLEM

...FROM A SOCIETAL PERSPECTIVE

The problem at the heart of this project is the following: in the EU we have substantive human rights guarantees in place, but when an EU body violates them, individuals often have no effective possibilities to go to complain and get redress.

This is highly problematic since rights are meaningless if they exist on paper but cannot be enforced in practice.

...FROM A LEGAL PERSPECTIVE

Providing remedies is a legal obligation under Article 47 EU Charter of Fundamental Rights, which guarantees that everyone has a right to an effective judicial remedy.

Legally speaking the problem is that we have designed procedures for individuals to challenge EU laws, but they are ineffective when human rights are violated through EU action.



Procedures before EU courts to challenge **EU legal acts**



Procedures ineffective against **EU action**

There is a historical reason for this: The EU has been created to achieve integration through law. With the EU making laws which are implemented by the Member States. But today there are EU bodies all over Europe that put laws into action. To complicate things further, they don't do so alone, they do it together with the Member States ('shared administration').

So while the EU has changed, its remedies system has not adapted.

A PRACTICAL EXAMPLE

The situation at the EU's external borders is a powerful illustration of the practical consequences of this state of affairs. Migrants were reported to have been mistreated in the context of border control operations organised by the European Border and Coast Guard agency, an EU agency better known under its acronym Frontex.



Image credit: Lighthouse Reports, 'Frontex Chapter II: Complicit in Pushbacks' (23 Oct 2020)

But because such mistreatment typically results from factual conduct rather than the adoption of a formal legal instrument, individuals are left only with recourse to remedies with notoriously low chances of success.

Further complicating access to justice is the fact that Frontex usually acts jointly with one or more Member States. The lack of access to a forum where joint responsibility could be implemented means that individuals usually have to choose who they want to hold to account.

AIMS AND SCOPE

...OVERALL AIM

In light of the transformation of EU power, the aim of this project is to critically analyse, rethink, and reform the EU's remedies system from a fundamental rights perspective, taking into account in particular the EU's use of non-legal tools and its administrative cooperation with national authorities.

...RESEARCH QUESTION

How can we adapt the system of remedies to the EU as an executive power in order to ensure fundamental rights are enforceable?

METHODS AND APPROACH

This project identifies shortcomings of the EU system of remedies from a legal and empirical perspective and provides solutions to improve it, both within the limits of the current constitutional set up of the EU Treaties and outside. Through comparative legal research, it explores possibilities for reform through a new fundamental rights complaints procedure tailored to the multi-level legal order of the EU.

Identify Obstacles

- Case studies
- Interviews

Define Benchmarks

- Administrative Law
- Human Rights Law

Develop Procedures

- Synthesis
- Comparative Legal Research

Contact:

Dr. Melanie Fink

Department of Legal Studies
Central European University
finkm@ceu.edu

Europa Institute
Leiden University
m.fink@law.leidenuniv.nl