

The human face of the European Union: Humane enough?

Final report

Co-organisers

Professor Dora Kostakopoulou (University of Warwick)
Dr Nuno Ferreira (University of Liverpool)

Date

20 July 2012

Venue

Alan Turing G107 and G108, University of Manchester

Funding bodies

Manchester Jean Monnet Centre of Excellence (Manchester JMCE) (£1,000)
University Association of Contemporary European Studies (UACES) (£655)

Programme and delivery of event

The final programme of the event (as circulated, including abstracts) can be found in Annex A. Unfortunately, several speakers had to cancel their participation in the event within the last few days before the event, which meant that the actual programme delivered was significantly different from the final programme circulated (Annex B). On a more positive note, a new speaker joined the event and all presentations were made in plenary, rather than in parallel sessions, which was greatly appreciated by all speakers and participants. Some pictures of the event, as well as a short summary of it, can be found in Annexes D and E.

Speakers and participants

Speakers: 21
Panel chairs: 7
Participants: 33 (see Annex B)
PGR students co-organising event: 4
Total: 65

PGR students with active role

Besides a significant number of PGR students from several higher education institutions participating in the event, four PGR students from the School of Law of the University of Manchester volunteered to co-organise the event (see Annex C), with the intention of developing their organisational skills and facilitating their networking activities. Two of these, Swati Gola and Jules Bradshaw, have also expressed interest in contributing towards the edition of the edited collection, which has been welcomed and accepted.

Financial report

Submitted separately, directly by the Finance team of the School of Law / Faculty of Humanities, University of Manchester.

Publication plans

The co-organisers of the conference are currently finishing drafting a proposal for an edited collection with a selection of the papers presented at the event. Support of the funding bodies will be acknowledged in published outcome.

Annexes

- Annex A – Final programme (as circulated, including abstracts)
- Annex B – Programme (as delivered)
- Annex C – List of registered participants
- Annex D – PGR students with active role
- Annex E – Selection of pictures
- Annex F – Event summary for UACES newsletter

The human face of the European Union: Humane enough?

20 July 2012

Alan Turing G107 and G108, University of Manchester

Final Programme

9.00-9.30	Registration (G107)	
9.30-9.45	Welcome (G107)	
	Professor Geraint Howells, Head of the School of Law of the University of Manchester Professor Dimitris Papadimitriou, Director of the Manchester Jean Monnet Centre of Excellence	
9.45-10.45	Human rights and the rule of law in the EU (G107) – Chair: Dr Nuno Ferreira (University of Manchester)	
	<i>European Law as a Law of Principles</i> Dr Antonios Platsas (University of Derby)	
	<i>Children's rights in the post-Lisbon era: a case of "add children and stir"</i> Dr Helen Stalford (University of Liverpool)	
10.45-11.45	European private law (G107) – Chair: Professor Geraint Howells (University of Manchester)	Labour and employment law (G108) – Chair: Dr Rilka Dragneva-Lewers (University of Manchester)
	<i>Fundamental rights and non-economic interests in European private law</i> Professor Aurelia Colombi Ciacchi (University of Groningen)	<i>Labour rights as human rights in the EU's Common Commercial Policy: the carrot or the stick?</i> Dr Samantha Velluti (University of Lincoln)
	<i>Regulating private health insurance: Oscillating between judicial adjudication and secondary law</i> Dr Kyriaki Raptopoulou (King's College London)	<i>Fundamental rights and public policy derogations from the free movement of workers and services</i> Adam McCann (University of Groningen)
11.45-12.00	Coffee-break (G107)	
12.00-13.00	Enlargement, neighbourhood, defence and external policies (G107) – Professor Dimitris Papadimitriou (University of Manchester)	Discrimination law and minorities (G108) – Dr Javier Garcia Oliva (University of Manchester)
	<i>Gender equality law and European integration in the post-communist EU member states</i> Dr Cristina Chiva (University of Salford)	<i>Minority Rights in the Post-Lisbon era</i> Dr Tawhida Ahmed (University of Reading)
	<i>The Development of New Crisis Management Tools and Their Impact on Human Rights</i> Julia Schmidt (University of Bonn)	<i>EU gender policy: Bound to an economic logic?</i> Sara Reis (King's College London)
13.00-13.45	Lunch (G107)	

13.45-14.45	<p>Free movement, citizenship, and third-country nationals I (G107) – Chair: Dr Liza Lovdahl Gormsen (University of Manchester)</p> <p><i>Co-creating European Union Citizenship Home (and) Abroad</i> Professor Dora Kostakopoulou (University of Southampton)</p> <p><i>A Good Thing, or Bad?: On EU Citizenship, Individual Empowerment, and Belonging Despite the State</i> Professor Dimitry Kochenov (University of Groningen)</p>	
14.45-16.15	<p>Free movement, citizenship, and third-country nationals II (G107) – Chair: Professor Dora Kostakopoulou (University of Southampton)</p> <p><i>The Relationship between the notions of “Discrimination” and “Restriction” in EU Free Movement Law: From a relationship of interdependence to one of (almost complete) independence in a Citizen’s Europe?</i> Dr Alina Tryfonidou (University of Reading)</p> <p><i>EU citizens’ whimsical status: Persons or actors on their way to full agency?</i> Päivi Neuvonen (University of Oxford)</p> <p><i>The two faces of EU citizenship: friend or foe of human rights?</i> Stephanie Reynolds (University of Liverpool)</p>	<p>Freedom, security and justice (G108) – Chair: Annette Nordhausen Scholes</p> <p><i>Crime victims’ rights</i> Professor Steve Peers (University of Essex)</p> <p><i>Two sides of the same coin: jurisdiction of the Court of Justice versus its current architecture: Enforcement of individuals’ rights within the area of Freedom, Security and Justice post Lisbon</i> Dr Agata B. Capik (University of Luxembourg)</p> <p><i>What can the emerging children’s rights agenda tell us about the human face of the EU? The example of child asylum-seekers</i> Dr Eleanor Drywood (University of Liverpool)</p>
16.15-16.30	Coffee-break (G107)	
16.30-17.30	<p>Economic regulation and social values (G107) – Chair: Professor Dora Kostakopoulou (University of Southampton)</p> <p><i>A constitution of social governance: Bridging the gap between the EU’s “economic constitution” and its social values</i> Professor Dagmar Schiek (University of Leeds)</p> <p><i>European solidarity – solid enough? Critical assessment of the measures taken to bring about an economic stabilization of the Eurozone</i> Martin Petschko (University of Luxembourg)</p>	
17.30-17.45	Conclusion (G107)	

Co-funded by Manchester Jean Monnet Centre of Excellence (<http://www.manchester.ac.uk/jeanmonnet/>)



and UACES - University Association for Contemporary European Studies (<http://www.uaces.org/>)



Abstracts

Human rights and the rule of law in the EU

European Law as a Law of Principles

By Dr Antonios Platsas (University of Derby, A.Platsas@derby.ac.uk)

Principles govern our law in Europe. As such, it is the aim of this exposition to first promote the idea that European law in its variable manifestations is a law of principles and to second analyse and evaluate the matter by way of exemplification. The author will proceed in his exposition by what he perceives as the leading principles of modern European law. The analysis will conclude with a critical note on the positive state of affairs that legal principles create or ought to create for the life of the individual. The approach incorporates findings from EU jurisprudence but also findings, to some extent, from ECHR jurisprudence. References to national law will be made where appropriate but the focus of this exposition will be on extra-national legal material in the subject area.

Children's rights in the post-Lisbon era: a case of "add children and stir"

By Dr Helen Stalford (University of Liverpool, stalford@liverpool.ac.uk)

Among the many constitutional and institutional changes brought about by Lisbon Treaty was the endorsement of 'Protection of the Rights of the Child' as one of the Union's fundamental objectives (Article 3(3) TEU). This commitment is reinforced by a new provision which singles out protection of the rights of the child as an important aspect of the EU's external relations policy (Article 3(5) TEU). Such explicit references have been welcomed by many children's rights campaigners as highly significant, providing the constitutional setting for much more effective and coherent EU action in relation to children. The aim of this paper is to critically examine whether this, indeed, is the case, or whether the changes brought about by Lisbon are simply another example of the EU's 'add children and stir' approach to children's rights. While acknowledging that the rhetoric of children's rights adds an appealing flavour to the EU framework and a degree of legitimacy to its growing human rights mandate, the paper questions whether it is supported by the necessary institutional, political and financial resources to affect children's rights and experiences in a meaningful way.

European private law

Fundamental rights and non-economic interests in European private law

By Professor Aurelia Colombi Ciacchi (University of Groningen, a.i.b.colombi.ciacchi@rug.nl)

An institution has a «human face» if it takes basic human interests seriously, including non-economic interests. The economic rationale of EU private law is a matter of fact. This paper explores the question of whether, where and how non-economic interests have found proper consideration in EU private law so far. Particular attention will be paid to the ECJ/CJEU jurisprudence concerning fundamental rights.

Regulating private health insurance: Oscillating between judicial adjudication and secondary law

By Dr Kyriaki Raptopoulou (King's College London, kyriaki.raptopoulou@kcl.ac.uk)

This contribution shall seek to explore the recent initiatives of the Commission and the case-law of the CJEU in the domain of private health insurance. After a lenient approach adopted at a pre-Lisbon stage in the case of *Bupa*, the Commission has recently placed emphasis on the integration of private health insurance markets and the abolition of the monopolies of certain private health insurers. To that effect, the word and spirit of the Non-Life Insurance Directives have been revived and a significant screening procedure of their national implementing measures has recently taken place.

Its *private* character notwithstanding, health insurance may equally offer substitutive cover to the population of some Member States. In that regard, the following issues shall be examined: first, whether the Non-Life Insurance Directives, which after all constitute the sole guidance as to the boundaries between social and private insurance, actually regulate the protection of consumers-insurees along with insurance market integration; second, the tendencies in the recent pertinent case-law and, finally, the regulatory pattern followed, so far as the latter issues are concerned, in the Solvency II Directive, coming into force in 2013.

Labour and employment law

Labour rights as human rights in the EU's Common Commercial Policy: the carrot or the stick?

By Dr Samantha Velluti (University of Lincoln, svelluti@lincoln.ac.uk)

The paper examines the role the European Union (EU) has committed itself to in relation to the promotion of social rights and international labour standards in its Common Commercial Policy (CCP), which raises many complex questions in relation to competence, coherence, effectiveness and legitimacy of the EU as a global actor. In the past decade the EU has been at the forefront of attempts to strengthen and promote the social dimension of globalisation and to improve global social governance through trade, focusing chiefly on the promotion of labour standards internationally through increased cooperation with the ILO and through its external trade policies.

However, there is little understanding as yet of how to ensure the protection and promotion of social rights effectively through trade policy instruments and, in this context, what the role of the EU can be in developing a linkage between trade and the social, thus ensuring a system of trading promoting more equitable global trade and sustainability and founded on discourses of social responsibility and justice in addition to free trade and open market economies. This analysis is particularly prominent and made necessary by fundamental changes introduced by the Treaty of Lisbon (TL) specifically in relation to the CCP as well as the EU's envisaged accession to the ECHR and the conferral of the same legal value of the Treaties to the EU Charter of Fundamental Rights, which combined with other key institutional changes, will also impact not only on the EU internally but also and significantly on the EU's external action and role as a global actor. In addition, little has been said about the role of labour rights as human rights in the EU's external action and the conception of labour rights as human rights remains a moot and controversial question.

In the light of these constitutional, institutional and substantive changes, the paper explores whether it is possible to develop a legitimate and effective CCP in a globalised economy and draw some tentative conclusions as to what the above role of the EU in its external trade relations may tell us more generally about the EU's humaneness in this field.

Fundamental rights and public policy derogations from the free movement of workers and services

By Adam McCann (University of Groningen, a.mccann@rug.nl)

This paper argues that the CJEU has the capacity to give the human face of the Union a healthier glow and build public confidence in a closer European market society. In order to narrow the scope of this paper, the focus will be primarily on case law whereby Member States are derogating from free movement of workers and services on public policy or public interest grounds. The CJEU jurisprudence regarding these free movement rules identify the recognition of many ancillary rights that are not strictly necessary to the provision or the receipt of an economic activity. Although certain academic and political opinion cites such activism as a political hijacking of internal market rules, this paper hopes to identify that such decisions demonstrate acts of benevolence. The CJEU has demonstrated that these free movement rules may act as a repository of fundamental rights in not only striving to realize market liberalization but also a wider panoply of socio-economic entitlements (freedom to trade, right of residence, social advantages, access to health-care, family rights). This paper aims to highlight that European citizenship, objective proportionality and fundamental rights play (and must continue to play via the now-binding Charter of Fundamental Rights) a crucial role in balancing various interests embedded in an increasingly closer social market. In doing so, it may become evident that the biggest blotch on the human face of the Union in this area is more a result of disproportionate national protectionism.

Enlargement, neighbourhood, defence and external policies

Gender equality law and European integration in the post-communist EU member states

By Dr Cristina Chiva (University of Salford, C.Chiva@salford.ac.uk)

While much of the existing scholarship on the post-communist member states has focused on the impact of the EU's conditionality prior to accession, there have been virtually no studies of how the new member states have begun to 'upload' their preferences in the field of gender equality to the EU level. This paper draws on the recent 'institutionalist turn' in feminist literature in order to examine the potential impact of two new member states, Poland and the Czech Republic, on the making of the EU's future gender equality policies. The two countries represent ideal case studies in that both have had the opportunity to shape the EU's agenda through their terms at the helm of the EU Presidency in 2009 and 2011 respectively. Within this context, the paper examines the ways in which governmental actors such as the Czech Civic Democrats (ODS), the Polish Law and Justice (PiS) and the Polish Civic Platform (PO) developed and implemented gender policy at the domestic and EU levels between 2004 and 2011. The paper argues that, contrary to the findings of the literature on the Europeanisation of Central and Eastern Europe, sociological institutionalism (rather than rational choice frameworks) constitutes the most plausible account of recent developments in gender policy in the Czech Republic and Poland.

The Development of New Crisis Management Tools and Their Impact on Human Rights

By Julia Schmidt (University of Bonn, shmidt@uni-bonn.de)

With operation ATALANTA, the European Union is undertaking its first naval operation under the auspices of the common security and defence policy. Thereby the EU demonstrates that it is gradually expanding its crisis management portfolio. Unlike other international actors, the EU has not deployed unmanned aerial vehicles (UAV) in its contribution to the maintenance and restoration of international peace and security yet. The EU has not been involved in targeted killings either. Nonetheless, the European Defence Agency has expressed its interest in developing a European civil/military UAV agenda, indicating a keen interest in the development of new tools of European crisis management.

The paper will examine the development of new crisis management tools and how they could affect the EU's relationship with human rights and humanitarian law. It will be argued that the observance of human rights standards will be crucial for the EU to avoid international responsibility but also to enhance the EU's legitimacy as an international actor. At the same time it seems doubtful whether concepts such as the mainstreaming of human rights into the EU's security and defence policy can make a difference.

Discrimination law and minorities

Minority Rights in the Post-Lisbon era

By Dr Tawhida Ahmed (University of Reading, t.b.ahmed@reading.ac.uk)

This paper analyses the “diversity policy” of the EU, with a focus on the rights of minorities, since the introduction of the Treaty of Lisbon in 2009. It argues that despite the context of the current global backlash against multiculturalism, EU law seemingly offers greater opportunities for the protection of minority rights and the flourishing of diversity. Many of the relevant examples of these opportunities come in legally binding form. Examples include: the Article 2 reference in the TEU to the EU being founded on, *inter alia*, the rights of persons belonging to minorities; and the entry into legally binding form of Article 21 of the EU Charter which prohibits discrimination against persons on grounds of their membership of a national minority group. These developments, together with other legal provisions since 2009 (Article 3 TEU, Articles 4 and 5 TEU; Article 10 TFEU), present better opportunities under EU law for respect for diversity.

Despite noting these positive expansions of the EU’s legal powers, it is nonetheless also argued in this article that this respect for minority diversity is less than genuine and for the most part, is simply the incidental effect of the safeguarding of the sovereignty of the EU Member States, or at least is so closely intertwined with such aim as to prevent genuine advances being made in minority protection in the future.

EU gender policy: Bound to an economic logic?

By Sara Reis (King’s College London, sara.reis@kcl.ac.uk)

EU gender policy has been a contentious policy area since its very start, with Article 119 of the Treaty of Rome and today constitutes the most advanced area of social policy in the EU. Originally inserted in the treaties to shield member states from France’s policy of equal pay, the ample interpretation of Article 119 by the European Court of Justice very early on transformed it into a mandate for the union to legislate in gender equality. Having legislated extensively on Equal Pay, Equal Opportunities and Equal Treatment, the European Union has often been criticised by feminists and women’s rights organisations for its exclusive focus on employment-related, “formal equality”, with a disregard for contesting current gender roles in the public and private spheres, the much more fundamental “substantive equality”.

This paper contests these criticisms and argues that the EU gender policy is rather more complex than their critics portray it. Based on analysis of the Parental Leave Directives (1996; 2010) and the Pregnant Workers Directive (1996) and respective proposal for amendment (2008), this paper seeks to show how the EU has gone farther than a purely economic stance and has achieved a true social component in its gender policy through the above mentioned pieces of legislation. Although greatly limited in its mandate to legislate in social policy, gender equality legislation at the European level has had a strong influence from women’s rights groups, notwithstanding the regular opposition from business groups and often member states’ governments.

Free movement, citizenship, and third-country nationals I

Co-creating European Union Citizenship Home (and) Abroad

By Professor Dora Kostakopoulou (University of Southampton, Dora.Kostakopoulou@soton.ac.uk)

European Union citizenship has been an experimental institution, but more attention needs to be directed at realising fully its transformative potential. Perhaps it is time to adopt a more citizen-centred approach, by treating all levels of governance as the co-creators of EU citizenship, thereby overcoming the centralism (EU) v 'home rule' (MS) dualism, and viewing citizens and their families as equal partners in the design and delivery of solutions to impediments to exercising EU citizenship - not as passive recipients of rule-based frameworks, policy initiatives and ideas. In this way, solutions to impediments to exercising EU citizenship, new citizenship practices, citizenship reform and citizenship-related awareness emerge as a result of continuous dialogue 'up', 'down' and 'sideways' and policy innovation. Accordingly, attention should be paid to encouraging multiple conversations among different actors, orchestrating co-creation, building capacity at various levels of governance, advancing new ways of engaging with the EU and influencing MS and their bureaucracies to put citizens' needs and their realities at the centre of their efforts.

A Good Thing, or Bad?: On EU Citizenship, Individual Empowerment, and Belonging Despite the State

By Professor Dimitry Kochenov (University of Groningen, d.kochenov@gmail.com)

EU citizenship goes to the very core of the relationship between the people and the state: the state sanction is *not required* for any EU citizen to belong, *de facto* and also often, *de jure*, to the people of a Member State, which profoundly affects the socio-legal essence of EU Member States. Divergent views on the relationship between EU citizenship and individuals' empowerment have emerged in this context. The views of G.T.Davies and J.H.H.Weiler – two extremes – are taken as a starting point to propose a paradigm of looking at EU citizenship based on what the status signifies in practice in terms of both empowerment and potential harm. Such dual perspective is used as a tool to predict the future development of the relationship between the two in the near- to mid-term future. From container societies of destiny (usually synonym for the lack of choice), EU Member States have turned into the spaces for the expression of free will: EU law grants the majority of EU citizens a right to be welcomed where they think they will feel at home and CJEU is ready to step in to protect such rights. From the shapers and custodians of 'their' societies, the Member States thus turned into the mere observers of how EU citizens use EU law and free will in order to organize their lives as they see fit crossing the ephemeral borders. This has profound implications for the individuals and the states alike, as it affects the moral reasons behind accepting or rejecting the social facts in framing policy and law in the areas, like political participation, where the notion of the 'people' plays a crucial role.

Free movement, citizenship, and third-country nationals II

The Relationship between the notions of “Discrimination” and “Restriction” in EU Free Movement Law: From a relationship of interdependence to one of (almost complete) independence in a Citizen’s Europe?

By Dr Alina Tryfonidou (University of Reading, a.tryfonidou@reading.ac.uk)

The concepts of “restriction” and “discrimination” are the soul and life of free movement law. These are the concepts that define what is caught within the net of the free movement provisions, as well as the limits that are placed on their scope of application. These concepts are not monolithic, but their interpretation is constantly changing and adapting, making it hard for EU lawyers to reach a consensus as to their true meaning, and even harder to agree on the exact relationship between the two. The confusion regarding the meaning of these terms is further compounded by the different approaches to their interpretation that have been followed in the context of the various freedoms: in the 1980s and early 1990s, the scope of the free movement of goods provisions was drawn more broadly than that of the free movement of persons; a situation that was, nonetheless, reversed by the mid-1990s. Yet, in recent years, a tendency to adopt a common interpretation across the freedoms can be discerned, this arguably implying a determination to embrace a position of convergence in the scope of application of the free movement provisions.

This paper will seek to analyse the meaning of the notions of “discrimination” and “restriction” in EU free movement law, and explore what is the relationship between the two. The basic premise from which the analysis will depart is that both notions are defined and limited by (what the Court determines to be) the aims of the free movement provisions of the Treaty, and hence the Court’s decision to extend or narrow down these goals has an immediate impact on their scope. It will be explained that the two notions under examination have traditionally been closely intertwined, in the sense that one defined the other, the element holding them together being the common aim of liberalising the inter-State movement of persons and factors of production in the EU. Yet, in recent years, the way that the Court has chosen to delimit their scope illustrates that each of these concepts can now have a life of its own, meaning that “discrimination” can cover discriminatory measures which do not lead to restrictions on free movement, and “restriction” can catch within its scope national measures that are not discriminatory. As will be seen, the major force behind these developments has been the introduction of Union citizenship and its transformation into a meaningful status by the Court of Justice. Finally, in the last couple of years the Court has taken a step further and when these notions are employed in the context of application of a citizenship – albeit non-free movement – provision (i.e. Article 20 TFEU), they are not only detached from each other but they are also – rightly – completely separated from the idea of movement, both as a jurisdictional and as a substantive requirement.

EU citizens' whimsical status: Persons or actors on their way to full agency?

By Päivi Neuvonen (University of Oxford, paivi.neuvonen@law.ox.ac.uk)

The Court of Justice of the EU has famously described EU citizenship as the 'fundamental status of all Member State nationals'. At the same time, it is well-known that EU citizenship is a derivative of national citizenship. By showing how the Court of Justice has attempted to reconcile the competing requirements of 'fundamentality' and 'derivativeness' of EU citizens' status in the realm of social integration, this paper will address the question of what are the parameters for EU citizens' full agency under EU law. It will argue that the predominant normative indeterminacy of EU citizenship leaves EU citizens deprived as persons. This argument will be developed within the analytical framework of philosophical and political personalism. By distinguishing between 'persons' and 'actors', this paper will discuss the notion of active personhood as a new default-position for EU citizens' status as agents. The recognition of EU citizens as persons is a crucial step for the implementation of the objectives of European integration in the post-Lisbon climate where the emphasis is increasingly on the democratic values of integration. Moreover, by regarding EU citizens as intrinsic subjects of European integration, active personhood can provide a mediating position between the requirement of active agency, on the one hand, and that of constitutive status, on the other. Finally, it will be concluded that the humaneness of the European Union vitally depends on our reply to the question of 'what is a person' for the purposes of European integration.

The two faces of EU citizenship: friend or foe of human rights?

By Stephanie Reynolds (University of Liverpool, S.Reynolds@liverpool.ac.uk)

This paper will argue that EU citizenship has endowed the free movement provisions with fundamental rights status which, in that context, can be extremely advantageous for individual citizens. However, this elevation of free movement to a fundamental right has simultaneously had serious repercussions for the protection of individuals' other fundamental rights in wider free movement law.

When EU citizenship divorced the right to free movement from economic activity, Articles 18 and 21 TFEU quickly became twin tools for the protection of the fundamental rights of economically active *and* inactive citizens, enhancing, *inter alia*, the right to vote, the right to family life, and the right to non-discrimination. Within the context of its own case law, then, EU citizenship is both a friend to and champion of fundamental rights.

Ironically, however, the fundamental rights language which surrounds free movement within the context of citizenship appears to have entered the lexicon of 'ordinary' economic free movement law to produce the opposite result: the repeated undermining of fundamental rights protection in pursuance of free movement aims. When a free movement provision clashes with a fundamental right, it is frequently the former which prevails. This is not simply a procedural eventuality inherent to the breach/justification procedure of the Treaty. The dual use of free movement within the citizenship and free movement law has blurred boundaries and transformed free movement from a means for the achievement of the internal market to an end in itself, producing the controversial results seen in *Viking* and *Laval*. Despite giving a human face to the EU, citizenship can also be a foe to those citizens it claims to protect.

Freedom, security and justice

Two sides of the same coin: jurisdiction of the Court of Justice versus its current architecture. Enforcement of individuals' rights within the area of Freedom, Security and Justice post Lisbon

By Dr Agata B. Capik (University of Luxembourg, agata.capik@uni.lu)

By enhancing the jurisdiction of the Court of Justice, the Lisbon Treaty aimed to improve Europe's ability to fully implement policy in the area of Freedom, Security and Justice as well as to ensure the consistency of interpretation and enforcement. Bringing a number of substantial modifications significantly influencing the procedure before the Court, the Treaty however has not accompanied these amendments by any revision of structure and functioning of the Court of Justice. At the same time the Stockholm Program underlined that "[a]ll opportunities offered by the Lisbon Treaty to strengthen the European area of freedom, security and justice for the benefit of the citizens of the Union should be used by the Union institutions." This holds especially true in the case of protection of individuals, to be ensured by the Court. The real impact of the extension of Court's jurisdiction on effectiveness of the protection of individuals within the area of Freedom, Security and Justice will become visible only after a transitional period (2014), examining, at the same time, the ability of the Court to meet the expectations.

With this in mind, the paper aims to discuss the jurisdiction of the Court of Justice after Lisbon, analyzing in this context the proposal for amendment of the Rules of Procedure, submitted by the Court to the Parliament and to the Council in March 2011. The attention thus will be drawn to the preliminary ruling procedure (I.), in fact a main channel for individuals to exercise their right to court at the EU level. Based on the experiences of the last years as well as on predictability of potential movements after the transitional period, the evaluation of the influences of the general application of preliminary ruling procedure on the effectiveness of the protection of the rights of individuals within the current architecture of the (overloaded) Court will be given (II). This evaluation will be concluded by a proposal of ensuring the right for an access to the Court while changing not solely the competences of the Court, but also its current architecture (III.)

What can the emerging children's rights agenda tell us about the human face of the EU? The example of child asylum-seekers

By Dr Eleanor Drywood (University of Liverpool, E.W.Drywood@liverpool.ac.uk)

This paper offers critical reflections on European Union (EU) asylum legislation as it relates to children, arguing that an apparently humane, highly prominent child-centred legislative agenda belies a poorly engendered children's rights strategy with potentially damaging effects for young migrants.

Over the past decade, the EU has pursued an increasingly ambitious and explicit agenda in relation to child asylum-seekers. On the one hand, this has been welcomed for demonstrating greater awareness of the legal status of a vulnerable and potentially marginalised group, reflecting wider trends towards a more social Europe in which the rights of both third-country nationals (as opposed to market citizens) and young people (as opposed to economically active adults) are upheld by the EU. On the other hand, it has meant that supra-national legislation now impacts upon a number of highly controversial rights issues, for example, detention of child asylum-seekers, fingerprinting, legal representation and procedures for returning failed young migrants, with very mixed results.

This paper will identify, and critique, the dominant children's rights model found within this body of legislation, and use this to ask wider questions about the evolving role of the EU as a rights actor. The position of a group which falls squarely outside the EC's historical domain of economic integration, and the specific context of a post-Lisbon era in which 'protection of the rights of the child' has entered the EU's constitutional framework (Article 3 Treaty on European Union), provide a particularly illuminating lens through which to assess how humane the EU has become.

Economic regulation and social values – where should the balance be struck?

A constitution of social governance: Bridging the gap between the EU's "economic constitution" and its social values

By Professor Dagmar Schiek (University of Leeds, d.g.schiek@leeds.ac.uk)

This paper offers a new legal studies approach to the tensions between the EU's economic constitution and its social values.

It focuses on the EU's judicial constitution, enshrined in doctrines such as direct effect and primacy of EU laws, which transformed a supposedly programmatic Treaty into a source of judicially enforceable individual rights. Transnational economic actors frequently invoked the Treaty's economic freedoms and competition rules, allowing the Court of Justice to drive economic integration, while challenging national social policy. As the Treaty contained few social rights, it only offered limited scope for judicial activism supporting such rights, in fields such as equal pay or free movement of workers. Mainly EU social integration depended on the EU's political will to deploy its scarce legislative competences. Accordingly, EU economic integration was decoupled from social policy which remained predominantly a national concern.

The increased divergence of labour costs and regulatory standards post 2004 enlargement generated incentives for business to take cases to the Court of Justice. This led to some high profile cases favouring EU economic freedoms over national social values, demonstrating that national policy prerogatives concerning social policy cannot be maintained under the EU economic constitution. Such predominance of economic integration conflicts with the EU Treaties, in particular the new social values and objectives and the horizontal social policy clause introduced by the Treaty of Lisbon. Following these changes, the EU has the constitutional mandate to reconcile economic and social integration. However, it still lacks the legislative competences to translate new values into reality. Given the prevailing predominance of the economic constitution, further de-coupling of economic and social aspects of EU integration seems inevitable.

A constitution of social governance could redress these problems. This paper proposes to interpret the EU Treaties in a manner which allows societal actors to contribute to social dimensions of European integration. This would involve requiring the Court of Justice to accept policies and regulatory instruments from non-state actors, promoting a bottom-up approach to social policy and offering a way to overcome the economic bias of the EU's constitutional law.

European solidarity – solid enough? Critical assessment of the measures taken to bring about an economic stabilization of the Eurozone

By Martin Petschko (University of Luxembourg, martin.petschko@uni.lu)

Under the ever mounting pressure of the current financial and economic crisis, the European Union, as well as certain Member States, has agreed on a number of steps to ameliorate the situation. In the course of this effort, European integration, already rich in acronyms, has witnessed yet another wave of abbreviations, such as EFSM, EFSF, ESM, TSCG to name but a few. The underlying measures aim at a restoration of confidence, preventing a contamination of the crisis's immediate effects and a long term recovery of those Member States that are most seriously affected.

Even though heavily criticised, not only for their alleged modest economic effectiveness, but further also for undermining the Community method and violating treaty principles, these measures have however partly been interpreted as expressions of an evolving European solidarity. The widespread absence of such solidarity has been identified by many as considerable shortcoming of European integration.

Against this backdrop the aim of this paper is twofold (i) to critically assess the consistency of the above-described measures with the treaty architecture as amended by the Treaty of Lisbon and (ii) to evaluate in what way they can be conceived as promoting European solidarity.

Further and on the basis of such assessment, the paper will undertake it to propose possible ways ahead.

The human face of the European Union: Humane enough?

20 July 2012

Alan Turing G107 and G108, University of Manchester

Final Programme

9.00-9.30	Registration (G107)
9.30-9.45	Welcome (G107) Professor Geraint Howells, Head of the School of Law of the University of Manchester
9.45-10.45	Human rights and the rule of law in the EU (G107) – Chair: Dr Nuno Ferreira (University of Manchester) <i>European Law as a Law of Principles</i> Dr Antonios Platsas (University of Derby) <i>Children's rights in the post-Lisbon era: a case of "add children and stir"</i> Dr Helen Stalford (University of Liverpool)
10.45-11.45	European private law (G107) – Chair: Professor Geraint Howells (University of Manchester) <i>Fundamental rights and non-economic interests in European private law</i> Professor Aurelia Colombi Ciacchi (University of Groningen) <i>The Ex Officio Application of Community Law as an Imperative of Protecting the Consumer as a Weaker Party</i> Dr Charlotte Pavillon (University of Groningen)
11.45-12.00	Coffee-break (G107)
12.00-13.00	Enlargement, neighbourhood, defence and external policies / Discrimination law and minorities (G107) – Professor Dimitris Papadimitriou (University of Manchester) <i>Gender equality law and European integration in the post-communist EU member states</i> Dr Cristina Chiva (University of Salford) <i>The Development of New Crisis Management Tools and Their Impact on Human Rights</i> Julia Schmidt (University of Bonn) <i>EU gender policy: Bound to an economic logic?</i> Sara Reis (King's College London)
13.00-13.45	Lunch (G107)

13.45-15.45	<p>Free movement, citizenship, and third-country nationals I (G107) – Chair: Dr Annette Nordhausen Scholes (University of Manchester)</p> <p><i>Co-creating European Union Citizenship Home (and) Abroad</i> Professor Dora Kostakopoulou (University of Southampton)</p> <p><i>A Good Thing, or Bad?: On EU Citizenship, Individual Empowerment, and Belonging Despite the State</i> Professor Dimitry Kochenov (University of Groningen)</p> <p><i>The Relationship between the notions of “Discrimination” and “Restriction” in EU Free Movement Law: From a relationship of interdependence to one of (almost complete) independence in a Citizen’s Europe?</i> Dr Alina Tryfonidou (University of Reading)</p> <p><i>EU citizens’ whimsical status: Persons or actors on their way to full agency?</i> Päivi Neuvonen (University of Oxford)</p>
15.45-16.00	Coffee-break (G107)
16.00-17.30	<p>Free movement, citizenship, and third-country nationals II / Economic regulation and social values (G107) – Chair: Professor Dora Kostakopoulou (University of Southampton)</p> <p><i>The two faces of EU citizenship: friend or foe of human rights?</i> Stephanie Reynolds (University of Liverpool)</p> <p><i>What can the emerging children’s rights agenda tell us about the human face of the EU? The example of child asylum-seekers</i> Dr Eleanor Drywood (University of Liverpool)</p> <p><i>A constitution of social governance: Bridging the gap between the EU’s “economic constitution” and its social values</i> Professor Dagmar Schiek (University of Leeds)</p>
17.30-17.45	Conclusion (G107)

Co-funded by Manchester Jean Monnet Centre of Excellence (<http://www.manchester.ac.uk/jeanmonnet/>)



and UACES - University Association for Contemporary European Studies (<http://www.uaces.org/>)



List of registered participants

Name	Institutional affiliation
Irina Sarbusteanu	
Yvette Tan	University of Manchester
Lena Karamanidou	City University London
Michael Lynn	
Rebecca Ehata	University of Manchester
Julia Kay Horn	University of Manchester
jonathan fisk	University of Manchester
Paul Copeland	University of Manchester
Samihah El-Gindy	
Ugo Callistus Orazulike	University of Manchester
Fang Sun	University of Manchester
Charlotte Pavillon	University of Groningen
Anastasia Tataryn	University of London
Golanna Ashtari	University of Manchester
Fiona Fargher	Liverpool John Moores University
Baigalmaa Gankhuu	University of Manchester
Ifeyinwa Miriam Okafor	University of Manchester
Nusula Kizito Nassuna	University of Manchester
Ahmed K Ceesay	University of Manchester
Helen Toner	University of Warwick
Sayaedshahabaldin Kazemian	
Borazjani	
Monica Tantalean	
Emmanuel Rugambwa	University of Manchester
Fiona Fargher	Liverpool John Moores University
Diogo Santos	
Charlotte O'Brien	University of York
Jeff Morgan	
Sharareh Ghazy	
Ingi Iusmen	University of Sheffield
Eugert Aliaj	Alliance Against LGBT Discrimination
Anca Voinea	Co-operative News
Naomi Pattirane	
Tasneem Ahmed	University of Manchester

PGR students with active role

Name	Institution	Assistance with event	Assistance with editing
Swati Gola	University of Manchester	x	x
Jules Bradshaw	University of Manchester	x	x
Tine Munk	University of Manchester	x	---
Wuraola Durosaro	University of Manchester	x	---

Selection of pictures



Dr Cristina Chiva (University of Salford), Professor Dimitris Papadimitriou (University of Manchester), Julia Schmidt (University of Bonn) and Sara Reis (King's College London)



Annette Nordhausen-Scholes (University of Manchester), Professor Dora Kostakopoulou (University of Southampton, now Warwick), Professor Dimitry Kochenov (University of Groningen), Dr Alina Tryfonidou (University of Reading) and Päivi Neuvonen (University of Oxford)

Event summary for UACES newsletter

(also available on <http://www.uaces.org/pdf/newsletter/n73.pdf>, p. 7)

The EU is recurrently criticised for being an organisation that has not been able to distance itself sufficiently from its roots in economic integration. Both academic and popular discourses also promote the idea that the EU consistently favours market values over social concerns and human rights. To what extent these discourses hold some truth in them is, however, contentious. Is the EU truly an organisation that lacks humaneness, in the sense of lacking compassion and sympathy for those affected by it?

To answer this question, Professor Dora Kostakopoulou (University of Southampton) and Dr Nuno Ferreira (University of Manchester) convened a one-day workshop entitled 'The human face of the European Union: Humane enough?', which was held on 20 July 2012 at the University of Manchester and was sponsored by the Manchester Jean Monnet Centre of Excellence and UACES. Fourteen speakers from several European countries, including UK, Germany and The Netherlands, spoke on the balance between economic / corporate and social / human interests in different EU policy fields. Different disciplines were represented (law, political science, sociology), and policy recommendations were advanced to the effect of achieving a fairer and more humane EU law and overall treatment of those affected by it.

The discussion focussed on the post-Lisbon state-of affairs, and particular topics covered included children's rights, consumer law, gender equality, enlargement, crisis management tools, and EU citizenship. The workshop ended with Professor Dagmar Schiek's presentation on how to bridge the gap between the EU's 'economic constitution' and its social values. According to Professor Schiek, there are good reasons to believe that a new 'constitution of social governance' can effectively create a balance between EU's economic and social integration. These words of well-grounded hope concluded the debates carried out during the day with a positive note.