ABSTRACTS TRACK 2

INTERNATIONAL CONFERENCE

THE GLOBAL CHALLENGE OF HUMAN RIGHTS INTEGRATION: TOWARDS A USERS' PERSPECTIVE

TRACK 2 - CONVERGENCE AND DIVERGENCE WITHIN INTERNATIONAL HUMAN RIGHTS LAW

Track leaders: Emmanuelle Bribosia and Isabelle Rorive, Université libre de Bruxelles

Panel session no. 1: Tracing the convergence and divergence of international human rights in the European Union

Wednesday 9 December, 13.30 – 15.00

Chair: Emmanuelle Bribosia

The Use of ECtHR Case Law by the Court of Justice after Lisbon: The view of Luxembourg Insiders

Jasper Krommendijk, Radboud University Nijmegen

This article examines how and why the Court of Justice examines and cites the case law of the ECtHR after the entry into force of the Charter of Fundamental Rights in 2009. The Court's practice will be sketched on the basis of 20 interviews with judges, référendaires and Advocates General at the Court of Justice. It will be shown that the Court of Justice has examined and cited the Strasbourg case law less frequently and extensively. Several reasons will be given for this, primarily on the basis of the observations of the interviewees as to their readiness to cite the Strasbourg case law. This includes a growing awareness that both courts are different as well as strategic reasons related to the wish to develop an autonomous interpretation of the Charter.

Mutual reinforcement between RED, ECHR and FCNM towards a shared burden of proof in cases on racial discrimination? Tracing avenues of convergence

Kristin Henrard, Erasmus University Rotterdam

The principle of effective protection of human rights is highly valued in the human rights paradigm. Arguably, this also implies a 'fair' burden of proof for alleged victims. It is generally acknowledged that 'full proof' of discrimination is very difficult to provide. This explains the development of 'sharing of the burden of proof ' in such cases: the applicant only has to establish a prima facie case of discrimination, after which it is for the respondent to prove that no discrimination has occurred.
In Europe the Court of Justice of the EU (CJEU) has been at the forefront of this development, and its jurisprudence has been enshrined in several directives. The Racial Equality Directive (RED) has been hailed as a tremendous leap forward for the protection of ethnic minorities, also because it makes sharing of the burden of proof mandatory. Unfortunately, very few referrals for preliminary rulings have so far reached the CJEU. The Court has not (had the chance to) clarify what is needed to establish a prima facie case, and meet the extensive uncertainty that exists among national courts, as the numerous questions of the referring court in the *Feryn* case demonstrated (see Jean Monnet

Working Paper 09/09).
The ECtHR has often been criticized for its decisions on the burden of proof, also in cases on racial discrimination. Nevertheless, the RED seems to exert a certain influence on the ECtHR's jurisprudence. The RED provisions on the (sharing of the) burden of proof feature several times in the 'overview of international law'. Furthermore, the ECtHR jurisprudence arguably reveals a slow but certain incorporation of 'sharing of the burden of proof'. This is especially visible in the acceptance of statistical evidence in the proof of indirect discrimination, but proves to be more complex and still in flux in cases on direct discrimination (comparing three 2014 cases: Abdu, Antayev and Begheluri).
While the FCNM does not work with complaints and as such is not concerned with burden of proof questions, the review of periodic state reports on article 4 (equality) pays considerable attention to the legislative framework on non-discrimination and strongly recommends sharing of the burden of proof, often explicitly referring to the RED.
In terms of possible convergence and mutual reinforcement between the respective legal regimes, it is opined that more explicit reference to the RED provision on the burden of proof by the ECtHR and a more consistent reference to the RED in the FCNM supervisory practice, particularly in its steady call for more awareness raising by the authorities on the sharing of the burden of proof, could enhance victims' awareness about legal enforcement possibilities. This raised awareness could then contribute to a rise in national court cases and also references for preliminary rulings to the CJEU. The ensuing CJEU case law could in turn assist the ECtHR jurisprudence and strengthen the 'bite' of the FCNM supervisory practice.

When non-discrimination law struggles with the "conscience" of companies

Emmanuelle Bribosia, Isabelle Rorive & Gabrielle Caceres, Université libre de Bruxelles

The notion of "ethos-based organisation" arises several questions nowadays. This exception to the antidiscrimination mandate allows certain organisations to assert a specific conviction and to require their members to act in compliance with it. Nevertheless, the definition of this status and the extent of the duties which can be imposed within this framework are far from clear in international human rights law, and are subject to relatively different approaches from one national context to another.

Within the EU, the initial project of the European Commission was aimed at public or private organisations whose "*direct and essential aim*" was to promote a religion or belief. However, the definition finally included in Article 4 § 2 of Directive 2000/78/EC refers to public or private organisations "*the ethos of which is based on religion or belief*". Therefore, an organisation could call for this qualification if it is based on a specific conviction, even if its principal object is not to promote this conviction, but rather make profits. Whereas some European national courts seem to favour this wider approach (e.g., C. Appel Paris, 27 November 2013, *Baby Loup*; C. Trav. Brussels, 15 January 2008, *Club*), others have rather been opposed to this enlarged interpretation (e.g., Cass.fr., 16 June 2014, *Baby Loup*), when the Court of Justice of the European Union has still never pronounced a decision based on Article 4 § 2 of Directive 2000/78/EC. Within the Council of Europe, the European Court of Human Rights seized the concept of "ethos-based organisation" as well. While referring explicitly to EU law, the Strasbourg Court developed its own interpretation of religious freedom and permitted, to a certain extent, the circumvention of the "standstill clause" contained in Article 4 § 2 of Directive 2000/78/EC.
In front of this European dissonance, the recent judgment of the US Supreme Court, in the *Hobby Lobby* case, raises the question of the extension of this status to for-profit corporations, in order to avoid the application of all non-discrimination legislation, including on other grounds than religion or belief (e.g. sex or sexual orientation). The analysis of the European legal orders, in the light of this North-American case-law, will allow to deepen the question of the harmonisation of different

conceptions in the field of religious freedom and that of the delicate articulation of this fundamental right with the principle of non-discrimination.

Panel session no. 2: Cultural diversity as a challenge to the convergence between international human rights bodies

Wednesday 9 December, 15.30 – 17.00

Chair: Isabelle Rorive

Convergence and divergence in the accommodation of cultural identity and socio-economic equality claims in the European and the Inter-American Courts of Human Rights

Valeska David, Ghent University

Cultural subordination and socio-economic inequality are more often than not intertwined. Most oppressed social groups reclaim equality along recognition of their differentiated experiences. The European and the Inter-American courts of human rights have been both confronted with these questions. Their jurisprudence on Roma and Travellers and on indigenous and tribal peoples, respectively, is illustrative of the complex –and yet underexplored- relationship between (cultural) identity and socio-economic empowerment. Roma and Travellers' cases have translated in a so-called jurisprudence of "difference" that recognizes the particular cultural identity of the members of these groups to account for their lifestyles and "special needs." At the same time, however, many of these cases have pushed the ECtHR to deal with legal claims on living conditions, housing and protection against eviction. Interestingly, the latter demands are shared by many others in Europe, especially after the financial crisis. At the other side of the Atlantic, the Inter-American Court's jurisprudence on indigenous and tribal rights offers some similarities. Building upon the protection of indigenous/tribal cultural identity, the IACtHR has granted indigenous and tribal communities a set of land rights and related procedural guarantees that are crucial to address their destitution. Of note, land rights are also a major concern for many other impoverished rural populations across Latin America. While the above two sets of case law have attracted extensive interest from the perspective of the 'culturalization' of human rights law, less attention has been paid to the interaction between this legal phenomenon and the advancement of socio-economic equality claims. The paper aims at analyzing this interaction. Thus, it does not only discuss the accommodation of cultural diversity, but also the extent to which this (does not) serves to account for concerns arising out of socio-economic inequality. The paper examines the legal claims advanced by the applicants as well as the responses provided by the regional courts. As to the latter, the paper seeks to shed light, firstly, on the legal tools utilized to account for the cultural and socio-economic disadvantage of the applicants concerned. Secondly, it explores the potential and limitations of using those legal tools, including their possible application to groups and individuals other than indigenous or ethnic minorities. This analysis is conducted against the backdrop of post-colonialist critiques of human rights, the universality and diversity debate and the interplay between 'identity' and 'distribution' politics.

European Muslims and the Securitisation of Rights Discourse

Stephanie E. Berry, University of Sussex

Since the terror attacks of September 11, 2001, European Muslims and the claims made by these communities for the protection of their rights have been increasingly viewed through the prism of security. Engagement with Muslims in the West has primarily evolved through counter-terrorism

strategies, such as PREVENT in the UK. Furthermore, Muslim attempts to articulate rights are often viewed as anti-democratic and antithetical to Western values. Consequently, the articulation of rights by Muslims has been viewed as a threat to the majority in Western Europe and Muslim voices have been silenced in democratic debate. By denying European Muslims the democratic means to air grievances, the potential for future conflict has increased (Stavenhagen 1987). In order to desecuritise relations, measures are needed to enable the effective articulation and debate of claims made by European Muslims for the protection of their rights. The minority rights regime provides tools specifically intended to enable the peaceful resolution of conflict, such as the right to effectively participate in the public life of the State and the right to intercultural dialogue and tolerance. However, the research of Pia and Diez indicates that the articulation of rights in an exclusive manner contributes to the escalation of conflict, whereas 'inclusive articulations of human rights tend to have a desecuritising effect'. By providing targeted rights and, thus, fragmenting human rights, the minority rights regime has the potential to encourage exclusive articulations of rights. Such exclusive articulations situate the rights of minorities in opposition to the rights of the majority. This, in turn, has the potential to reduce the receptiveness of the majority to such claims and to further securitise relations.5 This paper argues that the tension between the targeted rights provided by the minority rights regime and the inclusive rights articulation required by desecuritisation is not fatal. Rather than providing additional rights for persons belonging to minorities, the minority rights regime seeks to ensure the equal application of human rights standards to persons belonging to these communities (Scheinin 2003). Consequently, minority rights protection can be framed in an inclusive manner. The tools provided in minority rights standards will facilitate the desecuritisation of Muslim-majority relations in Western Europe, if the claims of European Muslims are not articulated in a manner that places them in opposition to the rights of the majority.

Human Rights and Female Genital Mutilation: Dignity in the Face of Adversity

Janhavi Ravi Iyengar & Abhishek Singh, Symbiosis Law School, Pune

Human Rights are inherent in nature. Irrespective of race, sex, caste or creed, nationality, birth, or colour, every individual is entitled to their human rights. With the evolution of time, however, societal norms superimposed such rights. Customary practices cloak violations of human rights laws, as history has proven time and time again. In light of this, we turn to a practice known as Female Circumcision.

Female Genital Mutilation or Circumcision ("FGM/C'") is the partial or total cutting of the clitoris or labia. It is a 'rite' in several African, Asian and middle-eastern nations. The global community refrained from addressing the issue until 1989, prior to which cultural practices lay outside World Health Organization ("WHO") jurisdiction. The Regional Committee of the WHO for Africa in 1989 passed a resolution to "adopt appropriate policies and strategies in order to eradicate female circumcision".

The WHO estimates that over 130 million girls alive today are subject to genital mutilation annually.

The UN Committee on Convention on the Elimination of all forms of Discrimination against Women ("CEDAW") in General Recommendation Number 14 on Female Circumcision (1990) denounced the practice. The United Nations General Assembly in its 2002 Resolution on Traditional or Customary practices affecting the health of women and girls called for ratification of CEDAW in order to adopt measures to prohibit practices like FGM. The UN Special Rapporteur on Violence Against Women ("VAW") lay emphasis upon the importance of empowerment of women in the fight against FGM.

The scenario posed, thus, is whether customary practices, however brutal, prevail over human rights law? If so, then, to what extent? With varied laws and their many ambiguities, the law-makers and judiciary play an integral role in balancing customary practices with national and international laws.

The authors will address this matter in detail.

The authors seek to address how judiciaries bridge the gap between diversity and anti-discriminatory law through legal pronouncements. The authors also seek to elucidate upon the history of FGM/C, so far as traceable, and the psychology behind the practice. We further seek to address the various international bodies involved in attempting to draw a boundary between customary practices and law as we know it today, with particular reference to the practice of FGM.

Panel session no. 3: Convergence in international human rights adjudication: techniques and challenges

Thursday 10 December, 16.30 – 18.00

Chair: Emmanuelle Bribosia

Rethinking the two margins of appreciation

Oddný Mjöll Arnardóttir, University of Iceland

Although widely commented on, the margin of appreciation doctrine is poorly understood and under-theorised. Exhibiting how two recent conceptualisations of the doctrine fall short of explaining its different uses in the in the Court's practice, this article provides a rethought theoretical account of how the margin of appreciation consists of two different elements that each is reflected also in the principle of subsidiarity. On the approach suggested, the 'systemic' (rethought 'structural') element of the margin of appreciation relies on a pragmatic rationale and is based on non-merits reasons. It has the function of influencing the distribution of tasks between actors in the European system for the protection of human rights. Conversely, the 'normative' (rethought 'substantive') element reflects normative flexibility and is based on merits reasons. It has the function of influencing how rights are interpreted and applied by the Court. While the two margins most commonly interact to create situations of partial deference to the national authorities, reliance on the systemic margin may in some instances lead to the creation of rebuttable presumptions of complete deference. The clarification of this distinction and the elaboration of its grounding in theory and practice provides the clearer understanding of the doctrine so often called for in the literature. It also facilitates normative assessment of how the Court uses the doctrine, including in those cases where it seems to be moving from 'substantive' to 'procedural' review.

"I move things around until they look right": A Critical Appraisal of the Principle of "Systemic Integration" in the Human Rights Paradigm

Adamantia Rachovitsa, Qatar University

There is a growing interest in international scholarship concerning the difficulties arising from the diversification of international law and the proliferation of international courts – the so-called fragmentation of international law. In this context, particular attention is paid to international human rights law bodies when engaging with other rules of international law, including other human rights rules or norms. The aim of this paper is to highlight and critically assess certain practical aspects of the "integrated interpretation", that is the interpretation of a human right by taking another human right norm into account.

The paper argues that construing the interrelationship among different human rights norms as 'integration' may raise certain concerns and that, therefore, cautiousness should be exercised. It does so by discussing specific examples from the case law of the European and Inter-American Courts of Human Rights. The examples concern a variety of norms and regimes, such as social and economic rights, human trafficking and non-discrimination.

The paper is structured into two parts. The first part addresses methodological issues when interpreting two or more human rights together. It discusses the concept of equivalent norms and the difficulties involved in identifying and appreciating the subtle *contextual nuances* between similar or even identical human rights norms, which originate from different treaty regimes. It also highlights the challenges in deciding when (and, if yes, to what extent) another norm is *relevant* for the purpose of interpreting a given human right.

The second part deals with policy oriented concerns from the point of view of the human rights bodies. It shows that the extent to which a given human right body is receptive to considering other

human rights norms is a matter of judicial policy. Further, the analysis underscores the limits posed to the integrated interpretation by the jurisdictional confines of international human rights bodies.
The paper concludes by stressing that convergence (or divergence) within international human rights law is not a static and fixed interrelationship between human rights norms. It is rather a dynamic matter that needs to be assessed by means of interpretation in specific instances.

The Protection of Minimum Socio-Economic Guarantees Throughout the Human Rights Corpus and the Idea of Overlapping Consensus

Ingrid Leijten, Leiden University

One of the most persistent dichotomies in human rights protection is that between 'permissible' civil and political rights review and 'impermissible' social rights review. Human rights documents guaranteeing civil and political rights have generally been accepted as important sources of legal obligations usually backed up by international courts. International human rights of a 'socio-economic' kind, however, have generally been taken less serious and it is their policy dimension and budgetary implications that are typically considered to prevent international bodies from rendering binding decisions based on these rights. This distinction has not only led to unequal chances for those seeking judicial recognition of their rights, it has also resulted in differentiated bodies of scholarship focusing on either of the two 'categories' of rights.
Things are, however, changing. International socio-economic rights are gaining momentum, which is illustrated by the increasing impact of decisions by the European Committee of Social Rights and by the entering into force of the Optional Protocol to the ICESCR. At the same time, due to broad interpretations of classical rights norms including positive obligations, international judicial protection on the basis of civil and political rights today regularly enters the field of socio-economic rights. The case law of the ECtHR, for example, clearly recognises the indivisibility of rights by creating obligations related to social security, housing, and health care. In this context it is important to overcome a focus directed at one part of the human rights corpus only, to instead take a fuller view. In my paper I will do so, by answering the question whether there is emerging common ground between the binding socio-economic protection derived from classical norms and the guarantees that—in an increasingly authoritative way—are inferred from socio-economic human rights catalogues. Starting point will be the idea of minimum core socio-economic rights protection based on what could be called an 'overlapping consensus'. Indeed, it appears that both the socio-economic guarantees recognized under the ECHR as well as the developing (judicial) protection offered by economic and social human rights treaties signal a focus on 'minimum' and 'essential' protection, whereby attention is had at what such protection according to consensus amongst States Parties should entail. It will be argued that such a focus not only forms a promising path to effective socio-economic rights protection, but also allows for a clear understanding for all involved parties in all judicial contexts of what these rights are about.

External referencing by the ECtHR and human rights integration: (missed) opportunities for rights of persons with disabilities

Dorothea Staes, Université libre de Bruxelles & Saint-Louis University Brussels & Joseph Damamme, Université libre de Bruxelles

A globalised human rights environment is characterised by a proliferation and diversification of normative instruments and institutions. The domain of the rights of persons with disabilities proves particularly topical in this respect as it is characterised, more than others, by a multi-layered (national, European and international) architecture.
On the one hand, such heterogeneity might bring diverging levels of protection and contradictory

norms and decisions, to the detriment of legal certainty. On the other hand, the diverse human rights environment offers opportunities in light of the progressive development of human rights and of the quality of decision-making. The aim of this paper is to illustrate the latter point by discussing the protection of the rights of persons with disabilities in the context of the Strasbourg adjudication process.
Several recent cases of the ECtHR in this field demonstrate that the Court has an insular perspective on the diverse 'external' environment and does not fully take account of instruments other than the ECHR and its Protocols. In the paper, it is argued that this statement proves true with respect to, at least, two issues. The first one deals with the construction of the concept of 'disability', for which the EctHR failed to recognise that disability can arise because of attitudinal barriers (e.g. case IB v. Greece). The second issue focuses on the substantial rights of persons with disabilities for which the ECtHR had (case Ivinovic v. Croatia on legal capacity) and has (pending case Gherghina v. Romania on accessibility to University buildings) the opportunity to integrate several principles stemming from the UN level.
While the ECtHR often refers to external instruments, a meaningful comprehensive approach to the heterogeneous normative context lacks in respect of the rights of disabled persons. Opportunities are missed; a more open view would enable a more specific and up-to-date decision-making, better adapted to the threats and needs of the persons. An open approach would also stimulate harmonising tendencies, with the potential of mitigating some challengesthat are often associated with the chaotic global normative environment, for instance in respect of legal certainty. Pending case before the Grand Chamber, Gherghina v. Romania, whose judgment is supposed to be delivered in May 2015, is a perfect opportunity to herald this approach and mobilise new potentials.

Panel session no. 4 - Convergence through adaption: Discussing the merit of new institutions and perspectives to human rights

Friday 11 December, 11.00 – 12.30

Chair: Isabelle Rorive

UN Special Procedures: system puppets or user's saviours?

Rhona Smith, Northumbria University

The principle of effective protection of human rights is highly valued in the human rights paradigm. Arguably, this also implies a 'fair' burden of proof for alleged victims. It is generally acknowledged that 'full proof' of discrimination is very difficult to provide. This explains the development of 'sharing of the burden of proof ' in such cases: the applicant only has to establish a prima facie case of discrimination, after which it is for the respondent to prove that no discrimination has occurred.
In Europe the Court of Justice of the EU (CJEU) has been at the forefront of this development, and its jurisprudence has been enshrined in several directives. The Racial Equality Directive (RED has been hailed as a tremendous leap forward for the protection of ethnic minorities, also because it makes sharing of the burden of proof mandatory. Unfortunately, very few referrals for preliminary rulings have so far reached the CJEU. The Court has not (had the chance to) clarify what isneeded to establish a prima facie case, and meet the extensive uncertainty that exists among national courts, as the numerous questions of the referring court in the *Feryn* case demonstrated (see Jean Monnet Working Paper 09/09).
The ECtHR has often been criticized for its decisions on the burden of proof, also in cases on racial discrimination. Nevertheless, the RED seems to exert a certain influence on the ECtHR's

jurisprudence. The RED provisions on the (sharing of the) burden of proof feature several times in the 'overview of international law'. Furthermore, the ECtHR jurisprudence arguably reveals a slow but certain incorporation of 'sharing of the burden of proof'. This is especially visible in the acceptance of statistical evidence in the proof of indirect discrimination, but proves to be more complex and still in flux in cases on direct discrimination (comparing three 2014 cases: Abdu, Antayev and Begheluri).
While the FCNM does not work with complaints and as such is not concerned with burden of proof questions, thereview of periodic state reports on article 4 (equality) pays considerable attention to the legislative framework on non-discrimination and strongly recommends sharing of the burden of proof, often explicitly referring to the RED.
In terms of possible convergenceand mutual reinforcement between the respective legal regimes, it is opinedthat more explicit reference to the RED provision on the burden of proof by the ECtHR and a more consistent reference to the RED in the FCNM supervisory practice, particularly in its steady call for more awareness raising by theauthorities on the sharing of the burden of proof, could enhance victims' awareness about legal enforcement possibilities. This raised awareness could then contribute to a rise in national court cases and also references for preliminary rulings to the CJEU. The ensuing CJEU case law could in turn assist the ECtHR jurisprudence and strengthen the 'bite' of the FCNM supervisory practice.

Intersectional approaches to non-discrimination and substantive consolidation in international human rights law

Joanna Bourke-Martignoni & Ivona Truscan, University of Fribourg

United Nations human rights treaty bodies have mainly relied on a single-entry approach to enforce norms prohibiting discrimination. The resulting practice of these bodies has tended to reinforce fragmentation and discursive hierarchies about which experiences of discrimination are identified and redressed by international human rights law. This paper uses arguments based on Kimberlé Crenshaw's theory of intersectionality (Crenshaw 1989, 1991) to suggest a more unified, inclusive approach to discrimination within the practice of the human rights treaty bodies.
The paper is divided into three sections and uses the jurisprudence of the Committee on the Elimination of Discrimination against Women (CEDAW) as the focus for its discussions. The first section compares two decisions on individual communications submitted to CEDAW, A.S. v. Hungary (2006) and R.P.B. v. The Philippines (2014). The applicants in both communications are women belonging to particular groups: A.S. is a Roma woman, and R.P.B. is a girl with disabilities. The use of a race-neutral discourse resulted in a failure to consider A.S.'s experience as Roma, which led to inadequate remedies being recommended. By contrast, the Committee's decision in the R.P.B case took full account of the applicant's situation at the intersection of systems of oppression based on her age, sex, and disabilities. The second section of the paper examines the arguments commonly advanced to justify the fragmentation of anti-discrimination law across the international human rights treaty bodies and suggests several solutions. It has been asserted that the difficulties with substantive and practical consolidation are inherent in the design of the multilateral human rights treaty system. This section will contest these arguments using an intersectionality-based logic to analyze existing treaty body practice. The final section discusses the solutions that have been proposed to address the currently partial and divergent approaches to discrimination in international human rights law and asks whether procedural reform will be effective in ensuring substantive consolidation. The paper concludes that an intersectional approach is capable of consolidating international human rights normson non-discrimination at a conceptual, substantive level and also through harmonized procedures and practice, thereby ensuring a more coherent and comprehensive system of human rights protection.

National human rights institutions in Europe: Independent bridge-builders in the multi-layered human rights system?

Katrien Meuwissen, Leuven Centre for Global Governance Studies

National Human Rights Institutions (NHRIs) are a rather new phenomenon in the human rights arena. The global success of NHRIs took off only after the adoption of the International Principles Relating to the Status of National Institutions (the Paris Principles) at the 1993 World Conference on Human Rights. The international acceptance of the Paris Principles propelled the concept of an NHRI as independent national human rights body, with a role as 'bridge builder' in the multi-layered human rights system; transmitting and implementing supranational norms at the domestic level and transferring human rights expertise to regional and global human rights forums.
As independent national body exclusively concerned with the promotion and protection of human rights, NHRIs have been promoted as offering a solution to the Janus faced state in the context of human rights. Yet, being state institutions with a mandate and funding dependent on the sovereign will of states, NHRIs find themselves in a paradoxical position too. Currently, the reliability of NHRIs is mainly assessed through a peer review process of the International Coordinating Committee of National Institutions (ICC) which indicates NHRIs' compliance with the Paris Principles.
The proposed presentation and paper would focus on the bridge-building role of NHRIs in Europe, including an assessment of their 'independence'. The European region is characterised by a densely populated but often fragmented human rights landscape. Many national human rights bodies exist in Europe (including human rights commissions, ombudsmen, national equality bodies, data protection agencies etc), but relatively few have been accredited as 'fully compliant' with the Paris Principles. The presentation will accordingly critically investigate which role Paris Principles compliant NHRIs can play in making human rights a reality in the multi-layered and multi-faceted European human rights context.

Beyond courts and judges: human rights protection within the administrative perspective

Lorenza Violini, University of Milan

The purpose of the paper is to enhance the effectiveness of human rights promotion when it is performed within the newly identified "administrative" perspective. Agencies and independent monitoring bodies are entering the arena of human rights at national, European and international level, hitherto mainly occupied by courts and judges, whose defensive approach (i.e. aiming at redressing single violations suffered by single citizens once violations have been performed) is perceived as insufficient.
The main question that underlies the paper is: are there alternatives to the traditional, defensive and insular instruments of protecting fundamental rights in the direction of a global promotion of rights that focuses primarily on knowledge as prerequisite for action?
The question implies to acquire a comprehensive dimension that is coherent with the global dimension of human rights; therefore it envisages the creation of a global network of governmental and non-governmental actors as well as a closer cooperation within existing networks and bodies.
The blooming of specific human rights institutions in different States is calling into question an understanding of human rights protection that is mainly focused on judicial review. However, the paper argues that administrative rights promotion could represent an effective instrument supplementing and complementing legal protection by the courts and therefore an important field of administrative activity. (Armin von Bogdandy, 2009)
Following this suggestion, the paper will consider several existing administrative agencies present at national, European and international level tasked with the protection/promotion of fundamental human rights and their forms of action; the American experience of creating independent

administrative agencies tasked with the regulation and adjudication of high complex scientific and technical matters will be involved in order to have a better insight in the widespread presence of (independent) agencies in the field of human rights.