

# HUMAN RIGHTS OF INMATES IN E.U. MEMBER STATES: UNITED IN DIVERSITY AND DISCIPLINE

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**Abstract:** *International politics nowadays unavoidably speak in terms of the expansion, defence, and institutionalization of human rights. This raises the issue of universalism in its cultural, philosophical, moral, and legal manifestations in light of the current human rights discussion. Moreover, the disciplinary power within the state is now the subject of a disciplinary mechanism in a broader context of international surveillance of human rights protection. The watcher has become watched and we can only ask ourselves: who holds the power within a state in today's world?*

**Key words:** *human rights, diversity, human dignity, freedom*

## 1. Introduction

The European Union has evolved from a simple community of states that bonded together in the devastating aftermath of the Second World War. From the early days of the European Coal and Steel Community it has ramified exponentially into a plethora of organisms that form the great union of states which have not only avoided yet another continental conflict in almost a century but also defined a new identity for all, a European one, deeply rooted in those long fought values which emerged from the deep chasm that was the fall of Rome and over the dark pits of the Dark Ages into the brighter ages of the Renaissance and of the Enlightenment.

It has, one can argue, evolved alongside Europe's values and aspirations into a full functioning union of states that not only share a common cultural heritage that stretches for millennia but also a deeply rooted system of values in which nothing is more important than individual freedom, human dignity and human rights.

Consequently, this European Union would be unsustainable as a transnational structure without the strict adherence of all member states to this core of common values. The European ideal would never survive under tyranny, its very existence being conditioned by the sacrosanct respect for the rights of the individual as the paramount form of good governance. Consequently, one would think this Union of "Freedom and Fairness" would prove to be "The Promised Land" of all Europeans.

As much as this noble purpose of rising from the tar of tyranny into this new Europe

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might sound like an idyllic realm, when one takes a closer look to one of the most overlooked and contradictorily ever-present components of society, the incarceration system, one cannot help but notice a de facto hiatus from those core ideals. One can argue that unity is not only in diversity, but also a union under a much harder predicament, a union under the omnipresent shade of discipline.

## **2. Unity and diversity**

Many analysts note that in a globalized world, the nation is beginning to lose its role as the geographic-historical-economic-cultural context of force that gives meaning to an individual. (see for example O'Hearn and Wilson, 2011, p. 253-258.) Thus, the nation is no longer the focal point and many peoples are made up of multiple national groups, with some nations coming together in global structures such as the European Union. (David, 2015, p. 31).

### **2.1. Unity**

The phrase "Unity in Diversity" refers to the unity of people who may differ in some ways such as class, ethnicity, culture, language, ideology, religion, and sect. It teaches us to come together and discover ways to connect with one another in spite of our differences. As a result of this kind of interaction, which fosters tolerance in people, a setting where people may live in peace with one another will be created. People would appreciate other people's opinions as a result.

The idea of unity in diversity is useful in resolving a variety of social issues. This is feasible because varied people frequently interact with one another. As a result, this fosters greater interpersonal respect. For a heterogeneous union of states such as the European Union, a "unity in diversity" is much needed.

Above all, the idea makes it possible for people of many classes, religions, and cultures to coexist peacefully. Riots and other disturbances are undoubtedly less likely when people believe in unity in diversity. It is used among diversified groups so that they can be uniformed amidst tolerance.

### **2.2. Cultural diversity**

The European Union's dictum, "*united in diversity*," or "*in varietate concordia*" in Latin, was first utilised in the year 2000 and it serves as a verbalisation of how Europeans have united in the great struggle for peace and prosperity, while also making the most out of the absolutely unique context of unity between cultures, traditions, and languages that manage to blend under the great umbrella of this newly formed entity.

For the Old Continent, cultural diversity is not a slogan but a day-to-day reality which against all odds is our greatest and one must add, most complicated core tenets and assets.

This unlikely union of this hyper-diversity of people naturally gives birth to different interests, skills, talents and most importantly, needs. Ironically, the goal of the Union

from the author's point of view is best described by a phrase patented not by a European but by an American: James Madison. As one of the Founding Fathers of the United States he advocated "to form a more perfect Union".

In this respect, we see enlightened authors such as Montesquieu, who has ideas which are later developed by Hegel. He explains the lives of peoples not just in terms of external, quantitative variables like geography, but also in terms of an inner, creative spirit of the people, since he develops their culture via a process of constant differentiation (Hildegard, 1918 *apud* Petre, 1999, p. 129).

The historian must examine and explain the evolution of this spirit in terms of laws rather than in a random manner. (Petre, 1999, p. 129) Therefore, cultural diversity is about appreciating that society is made up of many different groups with different interests, skills, talents and needs.

However, on a dark note, we also believe that cultural differences can lead to a lack of uniform application and interpretation of the law. This can sometimes result in differentiated human rights guarantees among member states. How does one unify cultures?

This can be achieved in two ways. Firstly, by adopting a treaty with the power of a constitution that promotes high and equal standards in human rights protection where human dignity is the nucleus.

Secondly, by creating institutions that ensure the correct interpretation and application of the law in order to ensure compliance with the high standards of human rights protection provided in the aforementioned treaty. Thus, when Foucault indicates that discipline is at the heart of punishment (Foucault, 1975, p. 130), we can observe how on an international scale, discipline is also imposed by the European Union upon its member states.

### **3. Human dignity – basis of unity in human rights**

It should be highlighted that human dignity is not only a fundamental right but also the source and foundation of all fundamental rights.

The 1948 Universal Declaration of Human Rights adopted by the United Nations included Human Dignity in its preamble, indicating the elements that highpoint its role: "*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world*".

The text indicates that human dignity must be respected in each and every circumstance for all people, regardless of race, social status, religious, sexual or political orientations and it should never be restricted to certain categories.

Furthermore, it enshrines in the very same preamble with an unshuttering resolve that indicates how society evolved into acknowledging that "*disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy [...] freedom from fear and want has been proclaimed as the highest aspiration of the common people*".

We are therefore compelled to analyse the protection of a human being's freedom

from fear.

The freedom from fear is actually not European in its core, but one of the four American freedoms. The legendary Four Freedoms Speech was delivered by President Franklin D. Roosevelt in 1941 at his Annual Message to Congress. He suggested the following as the "four essential human freedoms": freedom of expression, freedom of worship, freedom from want, and *freedom from fear*.

It refers to defending people from dangers to their safety and bodily integrity, which includes threats coming from external states, acts committed by a state against its people, acts committed by one group against another, and acts committed by individuals against other individuals.

This particular freedom has taken many forms throughout international documents that protect human rights. It involves security, physical and mental integrity. In this respect, we can observe how punishment has evolved throughout time from a ritual involving torture to incarceration as a more humane alternative in which the final purpose is to reintegrate a delinquent instead of impose unjustified sufferance.

Therefore, the universality of the freedom from fear also applies to inmates.

#### **4. A different dimension of Foucault's discipline**

Although crime has existed from the beginning of time, humankind's responses to it have changed. It occasionally serves as a clear indication of our priorities, and other times it demonstrates the human side of things.

The development of crime and punishment also reveals a lot about the growth and development of humanity.

The use of flogging, forced labour and body mutilation are all examples of previous forms of punishment. However, starting with the Age of the Enlightenment, punishment has evolved from the torturing of the delinquents' body to the incarceration of the delinquents in the hope of modifying their behaviour and reintegrating them in society.

Punishment has been viewed as a way to mend the societal harmony that has been broken. When society's shared values, morality, norms, and identity are threatened, a fracturing takes place.

Shared social norms and values are governed by the state, and those who violate them are subject to varying degrees of punishment, that nowadays include fines, community service and prison time.

The problem with punishment is that it can disclose the relationship between actors, institutions, administrative strategies, and social mechanisms through establishing and maintaining inequality among the population, in addition to being a technique of resolving threats to communal harmony.

This is the reason why the protection of human rights within the prison by those who hold the authority in the state is a necessity. This can be achieved through a form of disciplinary power that an international organism holds over the state.

Foucault emphasizes throughout his work that power is not synonymous with discipline, but rather, discipline is merely one way in which power might be used. The three components of Foucault's disciplinary power consist in: *examination, normalizing*

*judgment, and hierarchical observation* (Foucault, 1975, p. 170). Bentham's Panopticon is an example of disciplinary power, portrayed as a structure that demonstrates how people can be efficiently monitored and controlled.

In this respect, we have identified three main actors that ensure the disciplinary power over the member states when they interpret and apply the legal framework of human rights protection within prisons: The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), The European Court of Human Rights (ECHR) and The Court of Justice of the European Union (CJEU).

In order to understand the disciplinary power of these three institutions, we will briefly present how each of the three components of discipline mechanisms are reflected within their functions.

#### **4.1. Hierarchical observation**

Disciplinary institutions developed a control mechanism through which the practice of discipline assumes a process that coerces through observation (Foucault, 1975, p. 170 - 171). Being able to constantly monitor everything would be conceivable with the ideal disciplinary mechanism. Instead of using force, discipline is applied with a deliberate gaze.

In this respect, we see how an international institution has the possibility of surveillance over a state, observing the lack of compliance.

This can especially be seen by how member states are regularly monitored by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment that can investigate prison conditions and the treatment of inmates and write reports that are then published.

#### **4.2. Normalizing judgement**

Normalizing judgement involves first creating an ideal behaviour as a standard norm, and disciplining people to conform to this norm. (Foucault, 1978, p. 85). In this context we can assess *mutatis mutandis* that normalizing judgement involves disciplining a state to conform to international provisions.

The main scope of all the three institutions is to ensure, to some extent, the uniformity of the interpretation and application of the law.

Therefore, while the Court of Justice of the European Union (CJEU) interprets the EU law to ensure uniform application across the union and adjudicates legal disputes involving national governments and EU entities, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is established to oversee the implementation of the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (commonly referred to as the European Torture Convention).

Finally, the European Court of Human Rights ensures the correct interpretation of the European Convention of Human Rights.

### 4.3. Examination

Finally, the third component, examination, is the technique that makes it possible to qualify, classify and punish, by combining the two techniques mentioned above. (Foucault, 1975, p. 184) Every individual or state becomes a "case" that may be examined and explained. This component can be seen in the form of the two courts' rulings. The European Court of Human Rights rules on applications from either individuals or states that claim that the civil and political rights outlined in the European Convention on Human Rights have been violated, while it guarantees that European law is interpreted and applied uniformly throughout the EU by taking various legal actions.

### 5. Conclusions

In order to maintain high standards in the protection of human rights, due to cultural diversity, European Union member states have developed institutions such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Court of Human Rights (ECHR) and The Court of Justice of the European Union (CJEU).

In this context, disciplinary power is not only at the heart of the punishment through the form of incarceration, but can also be imposed by the European Union upon its member states. This dimension of discipline is to correct any mistreatment of inmates to ensure high standards in human rights protection in a multicultural international entity.

The analysis indicates how we are in the presence of a Panopticon within a Panopticon, in which those who have disciplinary power over inmates are also watched upon by higher ranking institutions who ensure the protection of inmates against any discretionary manifestation of authority.

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