**Introduction**

**Aim and Purpose**

This book is based on a study funded by the Swedish Research Council and recognised by the Stanford Harvard International Junior Faculty Forum,¹ and is aimed at explaining, confirming, and fostering the European human rights culture. This book is located in the fields of comparative law and European law. European human rights culture is a political term that was first introduced by Mr. Barroso, president of the European Commission.² Is the statement just a political exclamation that lacks judicial support? Problematically, there has been no research yet to define the precise content of this concept and to clarify its meaning for human rights protection as guaranteed by two European Courts. In an original and novel perspective, this book analyses through first hand interviews with members of the European judiciary the judicial perspective on the European human rights culture and sets this in context to the political dimension of the term. As we will see, the European human rights culture is not solid; hence our aim is not to produce an explicit answer on something that is not tangible. Rather, as we will explain, the European human rights culture is a political and judicial hybrid based on the legal cultures in Strasbourg and Luxembourg. This book fills the niche of researching the politically proclaimed term and combines the most recent developments for European human rights (EU Charter of Fundamental Rights, Accession of the EU to the European Convention on Human Rights, Protocol 14) with a close study of the European judiciary and their backgrounds when deciding European human rights cases.

Whereas, the European Court of Human Rights (ECtHR), based in Strasbourg, has been classically dealing with human rights protection in Europe, the Court of Justice of the European Union (CJEU), based in Luxembourg, has mainly taken care of the so-called economic freedoms enshrined in the EU

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² This term has been circulated by the President of the EU Commission Barroso. See G. Toggenburg, ‘Menschenrechtspolitik’, in W. Weidenfeld and W. Wessels (eds.), *Jahrbuch der Europäischen Integration* (Nomos, 2005) p. 181, at p. 182.
Treaty. Nevertheless, there has been a clear shift in recent years. Indeed, human rights issues in the EU legal order have been maturing immensely under the impulsion of both the case law of the CJEU and also by the adoption of legislation specifically concerning the protection of human rights, i.e. the creation of the Human Rights Agency in 2007, and the Lisbon Treaty of 2009, providing a legally binding nature to the EU Charter of Fundamental Rights. This calls for even more attention to human rights protection by the CJEU as accession of the EU to the European Convention on Human Rights (ECHR) is upcoming.

The book will uncover a two pull process, that of a judicial and political push towards human rights protection in Europe which – as we will discover – does not pull in the same direction. Rather, the split between the judicial and political notion will be discussed.

To determine the components of the European human rights culture, the book assesses the legal cultures of the European Court of Justice and the European Court of Human Rights. For this, the administrative, procedural and doctrinal basis of the Courts are provided. Most excitingly, first-hand data through interviews with the European judiciary is presented to assess the legal culture of each Court as a foundation of a judicial European human rights culture. Then, it analyses how this helps to understand the relationship between the two Courts. This interaction, or mélange, arguably leads to the formation of a dense European human rights area. This cross-fertilisation may also lead to increasing conflicts of interpretation and jurisdiction between the two European legal orders. Hence, this book suggests effective solutions to avoid such a conflicting relationship in order to better protect European individuals. In that respect, it appears clear that the case law of the CJEU and the ECtHR are the most important sources of European human rights law. Therefore, the book looks especially at cases dealing with the interaction between the two Courts in the fields of human rights. Notably, our book goes beyond looking empirically at the case law only, and will also pay regard to other legal material, such as the treaties, statutes, rules of the court, etc., which all build a framework for the European human rights culture. Nevertheless, the study will provide suggestions for solving the conflicts between the institutions in this new landscape of human rights jurisdiction and involve a close analysis of the relevant new Treaty provisions.

Significance

While there is a wide concern, even within popular discussion, on human rights in Europe, no book has been published to analyse the two Courts’ legal culture and to ask about its meaning for the interaction between the Courts. While there are a growing number of studies involving interviews with European judiciary, the special link with human rights culture and the legal culture of both European courts is lacking. This book fills this gap by relying on an earlier study by one of the authors on the Strasbourg legal culture and combining the analysis with