



SARA Law Research Center

International Journal of Legal and Social Order, <https://www.ccdsara.ro/ijlso>

ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188

Nº. 1 (2022), pp. 190-200

## THE LEGAL FORCE OF THE PRINCIPLES APPLIED BY COURT OF JUSTICE OF THE EUROPEAN UNION

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### **Abstract**

*The Court of Justice of the European Union applies, in addition to the general principles of law, other principles in the cases brought before it, which are used by the Member States and, in particular, by the courts. One category includes fundamental human rights, which are regarded as a variety of general principles. Another category of principles guides the procedure for deciding cases before national courts, namely: the principle of respect for the rights of the defence, the principle of equality, the principle of legal certainty, etc. All have been applied by the Court of Justice of the European Union since the European Communities were founded.*

**Key words:** *Court of Justice of the European Union; member states; courts; general principles; fundamental rights; European Union Treaties.*

### **INTRODUCTION**

Fundamental human rights are a special category of general **principles** (*I. Boghirnea, C. Dinică, M. Dinică, 2011, pp. 333-342; Ioana-Nely Militaru, 2017, p. 155 et seq.*), constituting, we can say, the majority of them (*O. Ținca, 1999, p. 205*); the founding Treaties of the European Communities have not provided in their contents express or general provisions in this regard.

## 1. FUNDAMENTAL HUMAN RIGHTS<sup>1</sup>

The subsequent Treaties, however, contain such provisions, as follows (*O. Manolache, 2006, pp. 26-28*):

☞ The Maastricht Treaty, in Art. 6 par. 1: "The Union is founded on the principles of democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States"; in para. 2: "The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950<sup>2</sup>, and as they result from the constitutional traditions common to the Member States, all of which are considered to be general principles of Community law", today of the European Union;

☞ The Treaty of Amsterdam introduced new provisions on this matter into the TEU (Maastricht Treaty), which were subsequently amended by the Treaty of Nice in Article 7(1), as follows: "The Council, meeting in the composition of the Heads of State and/or Government and acting unanimously on a proposal from one third of the Member States or from the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member of the principles set out in Article 6(1) of the Treaty on European Union. 1 (...), in which case it may decide to suspend certain rights of the Member State"<sup>3</sup>.

In 1969<sup>4</sup> and 1970<sup>5</sup>, the Court of Justice ruled that fundamental rights form an integral part of the general principles of law, drawing on common constitutional traditions, and that their observance is an obligation requiring a guarantee which meets the objectives of the Community.

In 1974<sup>6</sup>, the Court made the following clarifications (*G. Isaac, M. Blanquet, 2001, pp. 178-179*) which are considered important from a case-law perspective:

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<sup>1</sup> There are other general principles applied by the Court of Justice than those presented in the text of this paper, namely: the right to property, the principle of unjust enrichment, the right to freedom to pursue economic activities, the recognition of self-defence, force majeure and state of necessity, the possibility of assignment of rights, respect for legal certainty, non-retroactivity of criminal law, the principle of legitimate expectations, the principle of equality in the field of economic regulation, respect for acquired rights, respect for professional and business secrecy, respect for private and family life, the right to freedom of expression, the principle of good administration in relations with Member States, the principle of protection against arbitrary or disproportionate interference by public authorities, the *nulla poena sine lege* principle, freedom of religion, the right to an effective judicial remedy.

<sup>2</sup> It entered into force on 3 September 1953.

<sup>3</sup> The provision is almost identical to that contained in Article 7 of the Lisbon Treaty (TEU).

<sup>4</sup> ECJ, 26/69, *Stauder*, 12 November 1969, ECR 419.

<sup>5</sup> ECJ, 11/70, *Internationale Handelsgesellschaft*, 17 December 1970, ECR 1125.

<sup>6</sup> ECJ, 4/73, *Nöld*, 14 May 1974, ECR 491.

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- in the field of fundamental rights, the general principles of law to be applied at Community level are the national guarantees with the highest degree of transposition;

- by means of general principles, the provisions of the European Convention on Human Rights and Fundamental Freedoms are integrated -into the Community legal order, i.e. the European Union (today), as a minimum standard of applicability;

- these fundamental rights, which must be taken into account in relation to the social significance of the goods and/or activities protected, may be subject to certain limits in order to achieve objectives of general interest pursued by the Community/Union, provided that these rights are not prejudiced.

-The Joint Declaration of 5 April 1977 by the institutions of the Parliament, the Council and the Commission stressed the paramount importance which these Union structures attach to respect for fundamental rights, as they result from the provisions of the constitutions of the Member States and the European Convention on Human Rights and Fundamental Freedoms of Rome (1950). With regard to this Convention, the Court of Justice of the EU, in 1986, stated that it is the primary reference on fundamental rights<sup>7</sup>.

Thus, the Court has held that where a Member State refers to the provisions of the EU Treaties in order to justify a national provision which is capable of hindering the exercise of a right guaranteed by the Treaty, this justification provided for by Community law must be interpreted in the light of the general principles of law and, in particular, in the light of fundamental rights<sup>8</sup>.

The European Communities were concerned about acceding to the Convention, but the Court of Justice of the EU, on 28 March 1996, in an opinion, considered that - at the time - the Communities were not in a position to conclude international agreements to this effect<sup>9</sup> and also did not have the right to adopt Community rules on human rights (*O. Tinca, 1999, p. 206; P. Manin, 1997, p. 291*).

☞ At the Nice European Council on 7 November 2000, the institutions of the European Parliament, the Council of the European Union and the Commission solemnly proclaimed the Charter of Fundamental Human Rights. It was drawn up by a convention of 30 representatives from national parliaments, 16 representatives from the members of the European Parliament, 15 personal representatives of the Heads of State or Government and one Commissioner

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<sup>7</sup> ECJ, 222/84, *Johnston*, 15 May 1986, ECR 1663.

<sup>8</sup> ECJ, 209/90 I, *Commission v. Germany*, 8 April 1992, ECR 2639.

<sup>9</sup> By the Treaty of Lisbon "the Union accedes to the Convention (...)"; see Art. 6 par. 2 TEU.

representing the Commission (*V. Constantinesco*, 2002, p. 816; *O. Manolache*, 2006, p. 29)<sup>10</sup>.

- It was pointed out that this proclamation makes the protection of fundamental rights at Union level more visible and transparent for the Union citizen, and the Court of Justice in Luxembourg will be entitled in the future to refer to the Charter when examining the compatibility of a specific (EU) act with fundamental rights. This gives the Charter the exclusive status of a genuine interpretation of the legal principles laid down in Article 6 TEU, all the more so since it was unanimously approved by the national governments and parliaments of the Member States<sup>11</sup>.

A clear distinction between fundamental human rights and other principles of law could not be established, therefore their application is confusing<sup>12</sup>.

For example, the Luxembourg Court has validated such principles, but they can also fall under the category of human rights. Here we also include, for example, the following principles: the fundamental right to inviolability of the home (this is a principle common to all the legal systems of the Member States), the right to form trade unions (this is expressly provided for in international reference documents)<sup>13</sup>, the principle of democracy (this is reflected in the need for Union citizens to participate in the European Parliament, as a representative assembly)<sup>14</sup>, the right to respect for private life (this derives from the common constitutional traditions of the Member States), the right of all persons in adversarial proceedings to a fair trial (*For a detailed analysis of these principles - O. Manolache*, 2006, pp. 29-33).

☞ In the Lisbon Treaty, according to Art. 6 par. 1 TEU, "the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted on 12 December in Strasbourg, which has the same legal value as the Treaties.

Next, par. 2 of Article 6 TEU states that the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Fundamental rights, as guaranteed by the European Convention for the

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<sup>10</sup> The proclamation was made jointly by the Presidents of the Council, Parliament and Commission on 7 December 2000 - Bull. E.U. No 12/2000, pp. 171-177.

<sup>11</sup> *Ditto*.

<sup>12</sup> *Ditto*.

<sup>13</sup> For example, the Universal Declaration of Human Rights, adopted by the UN in 1948; the European Convention on Human Rights of 1950; the International Labour Organisation Convention No 87/1948 concerning Freedom of Association and Protection of the Right to Organise; the International Covenant on Civil and Political Rights, adopted by the UN in 1966; the International Covenant on Economic, Social and Cultural Rights, adopted by the UN in 1966, etc.

<sup>14</sup> According to Article 43 para. (2) TEC, consultation of the Parliament is required as a means by which it participates in the Community legislative process, as an essential factor in the institutional balance sought by the Treaty.

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Protection of Human Rights and Fundamental Freedoms, as they result from the constitutional traditions of the Member States, fall within the category of general principles of Union law (*T. Avriganu, 2010, pp. 70-84*).

☞ Scope of the Charter (*in accordance with Article 51 of the Charter*).

The provisions of the Charter of Fundamental Rights are addressed to the institutions, bodies, offices and agencies of the Union (subject to respect for the principle of subsidiarity) and to the Member States only in so far as these structures apply Union law.

These institutions, bodies, offices and agencies of the Union and the Member States shall respect those rights and principles and promote their application within their limits:

their - duties;

- powers conferred on the Union by the Treaties.

In the same sense, the Charter:

does- not extend the scope of Union law;

- no new tasks or competences are created for the Union;

there - is no change in the tasks and powers laid down in the Treaties.

☞ The scope of interpretation of the rights and principles contained in the Charter is expressly set out in Article 52 of the Charter.

Subject to compliance with the principle of proportionality, restrictions on the exercise of the rights and freedoms recognised by the Charter may be imposed only if they are necessary and genuinely meet objectives of general interest laid down by the Union or if they meet the need to protect the rights and freedoms of others.

The interpretation of the rights and principles that are regulated by the Charter is achieved by the fact that they are either to be found in the Charter or arise from the regulations mentioned in the order of their legal force:

European - Union Treaties; (*E.N. Vâlcu, 2012, pp.17 and following*)

- European Convention on Human Rights and Fundamental Freedoms;

- the constitutional traditions common to the Member States.

The rights recognised by the Charter, present and in the Treaties, shall be exercised under the conditions and within the limits of the provisions contained therein

Moreover, since the Charter contains rights which are reflected in the rights guaranteed by the European Convention for the Protection of Fundamental Rights and Freedoms, their meaning and scope are identical to those laid down in that Convention. Under these circumstances, European Union law gives wider and more secure protection to these rights.

In the same way, the Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, rights which are interpreted in accordance with those traditions.

With regard to the principles contained in the Charter, they will be applied as follows:

through legislation;

- by means of implementing acts adopted by the Union institutions, bodies, offices and agencies;

- by means of acts of the Member States when implementing Union law in the exercise of their powers.

Those acts, i.e. those implementing the principles laid down in the Charter, may be relied on before the courts solely for the purpose of interpreting and reviewing their legality.

The Charter also contains provisions designed to protect fundamental human rights and freedoms. Accordingly, no provision of the Charter may be interpreted as restricting or affecting these rights and freedoms, within their proper scope of application of course, by the following regulations:

European - Union law as well as international law;

- international conventions to which the European -Union or its Member States are all parties;

- European Convention for the Protection of Human Rights and Fundamental Freedoms;

- Member States' constitutions.

## 2. PRINCIPLE OF RESPECT FOR THE RIGHTS OF THE DEFENCE

This principle must guide the procedure before the courts of the European Union (*N.-E. Hegheş, B. Buneci, 2022, p. 7 et seq.*). In the process of applying EU law, guaranteeing 'respect for the rights of the defence' has many aspects:

☞ the right to be heard, subject to respect for the adversarial nature of the procedure, both before judicial bodies imposing financial penalties<sup>15</sup> and before administrative bodies, even if they are purely advisory, involving disciplinary<sup>16</sup> or administrative penalties<sup>17</sup>. In this connection, the question of hearing witnesses, whether this has been requested in specific cases, or the right to obtain information, arises. For example, in relation to documents requiring the Commission to decide whether an agreement has infringed Article 105 TFEU, under the conditions of respect for confidentiality and professional secrecy, vis-à-vis interested third parties (*O. Manolache, 2006, p. 34 and works cited therein*);

☞ the right to assistance offered by national authorities including the right to legal assistance and representation<sup>18</sup>.

Cyberbullying occurs most of the time during school, but also outside of school, involving children or adolescents, as criminals, who use computer systems

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<sup>15</sup> ECJ, 42 and 49/59, *S.N.U.P.A.T*, 22 March 1961, ECR 156.

<sup>16</sup> ECJ, 35/67, *Van Eick*, 11 July 1968, ECR 481.

<sup>17</sup> ECJ, 85/76, *Hoffmann-Laroche*, 13 February 1979, ECR 511.

<sup>18</sup> *Ditto*.

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and other information and communication technology devices in order to threaten, harass or intimidate other children or teenagers, who become victims.

According to specialized literature, the most frequently encountered motivations are the following (*Easttom, Taylor, 2011, p. 309*):

### ***II.1 Low self-esteem***

Some cyberbullies have a sense of low self-esteem, and by denigrating other people they can feel better. The Internet allows cyberbullies to denigrate other people from a distance. Most cyberbullies have low self-esteem, and by insulting and threatening other young people, they feel much better.

### ***II.2 Obsession***

In some cases the cyberbully becomes obsessed with the target he wants to harass, because he has some unrequited feelings towards the victim. There are situations in practice when cyberbullying can start even if the relationship between the cyberbully and the victim ends against the will of the perpetrator.

### ***II.3 Revenge***

In some cases, the cyberbully wants to take revenge on the victim due to some injustices, regardless of whether they are real or imaginary. The cyberbully believes that only by causing significant harm to the victim through online harassment, he will consider himself avenged against this injustice. Cyberbullies may be motivated by revenge, often feeling aggrieved.

### ***II.4 Mental instability***

There are cases in which the cyberbully presents a mental instability and can harass a person due to some illusions that he has.

Another motivation of cyberbullies can simply be the desire to have fun at the expense of other children or teenagers.

## **3. THE PRINCIPLE OF EQUALITY**

The principle of equality prohibits discrimination on grounds of nationality or sex, which means equal treatment of parties in identical and comparable situations<sup>19</sup>. This principle is regulated by the provisions of the Treaties themselves, as follows:

- ☞ Article 157 TFEU prohibits discrimination between the sexes, in line with the principle that women and men should receive equal pay for equal work;
- ☞ Article 18 TFEU expressly prohibits discrimination on grounds of nationality. Thus, the institutions of the European Parliament and the Council may adopt, in accordance with the ordinary procedure under Article 294 TFEU, any rules prohibiting such discrimination;

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<sup>19</sup> ECJ, 8/57, *Groupement des hauts fourneaux...*, 21 June 1958, ECR 223; ECJ, 265/78, *Ferwerda*, 5 March 1980, ECR 617.

- ☞ according to Article 19 TFEU, reference is made to combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, through the adoption of the necessary measures by the Council, acting in accordance with a special legislative procedure, and with the consent of the European Parliament;
- ☞ according to Article 46 para. (3) TFEU, any discrimination between producers and consumers within the European Union is excluded in the common organisation of agricultural markets;
- ☞ according to other provisions, for example Articles 46, 48 and 49 TFEU (*O. Manolache, 2006, p. 34 and works cited therein*), discrimination is prohibited in the area of free movement of goods, persons and capital.

The principle of non-discrimination applies to all legal relationships established in the territory of the Union, based on the place where they were concluded or the place where they produce their legal effects (*O. Manolache, 2006, p. 34 and works cited therein*). It should be noted that discrimination must be sufficiently and objectively justified and not arbitrary.

#### 4. THE PRINCIPLE OF LEGAL CERTAINTY

The principle of legal certainty is based on the certainty which the law offers, both as regards individuals and as regards the Member States and the Community institutions (*A. Barav, C. Philip, 1993, p. 211*) and the Union. The principle of legal certainty applies in particular in the following areas (*G. Isaac, M. Blanquet, 2001, p. 180*);

- ☞ prescription and limitation. The Court of Justice imposes certain time-limits for the institutions to exercise their powers, with the aim of enabling litigants to make use of their legal remedies. By way of example, the Commission is obliged to rule within -two months on the compatibility with the TFEU of draft aid measures submitted by the Member States<sup>20</sup>; in the context of an action for failure to act, the applicant is also obliged to refer the matter to the institution concerned within -two months (*Article 265 TFEU*)<sup>21</sup> ;

- ☞ non-enforceability of an act which -has not been adequately publicised<sup>22</sup> ;

- ☞ non-retroactivity.

With certain exceptions, a legal act of the Union cannot produce its effects at a date prior to its publication; in the spirit of legal certainty, the Court of Justice, in certain situations, limits or rejects the retroactive effect which accompanies a judgment of interpretation or a declaration of invalidity adopted on

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<sup>20</sup> ECJ, 120/73, *Lorentz*, 11 December 1973, ECR 1481.

<sup>21</sup> ECJ, 59/70, *Netherlands*, ECR 639, 6 July 1971.

<sup>22</sup> ECJ, 98/78, *Racke*, 25 January 1979, ECR 69.



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the occasion of a preliminary reference for interpretation or examination of validity<sup>23</sup>;

☞ legitimate expectations (*F. Hubeau, 1983, p. 143; P. Mengozzi, légitime, 1997, p. 13*). The principle is transposed from German law. In particular, it protects the addressees of Community/Union provisions against changes to the regulations in question<sup>24</sup> with immediate effect and without prior notification, as well as against wrongly supplied information<sup>25</sup>;

☞ clarity and precision of the law. This principle challenges unclear formulations of Community/EU texts<sup>26</sup>, the transposition of directives by administrative means, which by their legal nature are amendable<sup>27</sup> or the communication of a decision in a -language other than that of the addressees<sup>28</sup>.

Therefore, regulations must be (*A. Barav, C. Philip, 1993, p. 862; O. Tinca, 1999, p. 208*):

- clear and precise in order to establish with certainty the rights and obligations of the recipients;
- predictable for litigants;
- effective and also cover all cases where a transposition of a directive into national, domestic law is envisaged;
- limited in time in terms of their effects; this means that a text can only be applied exceptionally for a period prior to its publication. Also, the interpretation of Community/EU texts must be made in relation to the legal rules in force and not in relation to subsequent amendments.

### 5. PRINCIPLE OF RES JUDICATA

The principle, also known as non bis in idem, is governed by Art. 4 par. 1 Protocol No. 7 of the European Convention on Human Rights.

It prohibits a new assessment, with regard to the commission of an act which results either in a second sanction, in addition to the first, if liability is established for the second time, or a first sanction, if the liability not established by the first sanction is established by the -second (sanction) (*O. Manolache, 2006., p. 34*).

However, two parallel procedures have been accepted for preliminary rulings, one Community and one national - for example, in competition matters, to impose a double cartel sanction. The acceptance of such a dual procedure results from the system of shared jurisdiction between the Community and the Member

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<sup>23</sup> ECJ, 43/75, *Defrenne*, 8 April 1976, ECR 455; ECJ, 145/79, *Roquette*, ECR 1917.

<sup>24</sup> ECJ, 74/74, *C.N.T.A.*, 14 May 1975, ECR 533.

<sup>25</sup> ECJ, 169/73, *Compagnie Continentale France*, 4 February 1975, ECR 117.

<sup>26</sup> ECJ, 169/80, *Société Gondrand*, 9 July 1981, ECR 1931.

<sup>27</sup> ECJ, 102/79, *Com. C Belgium*, 6 May 1980, ECR 1473.

<sup>28</sup> ECJ, 66/74, *Farrauto*, 18 February 1975, ECR 157.

States with regard to cartels<sup>29</sup>. In order for the procedure to apply, the offences must have been committed on Community territory and the proceedings must be brought before Community courts.

## 6. THE PRINCIPLE OF LOYAL COOPERATION

The principle of loyal cooperation<sup>30</sup>, also known as the principle of solidarity, is laid down by the Court of Justice<sup>31</sup> and regulated in Article 4 TFEU. It derives from the very nature of Union law and involves three categories of obligations. One is positive, and is incumbent on both the Union and the Member States, and the other two are incumbent only on the Member States, of which one is positive - of a general nature - and the other is negative, as follows:

- ☞ The Union and the Member States shall respect and assist each other in carrying out their tasks under the Treaties (*Article 4 TEU, first sentence*);
- ☞ Member States are required to take any general or special measures required to ensure fulfilment of the obligations arising out of the Treaties or resulting from action taken by the institutions of the Union (*Article 4 TEU, second sentence*);
- ☞ Member States are obliged to refrain from any measure which could jeopardise the attainment of the objectives of the Union (*Article 4 TEU, third sentence*).

An example of loyal cooperation is that provided for in Article 13(1). (2) TEU, which states that the institutions shall cooperate in conditions of mutual loyalty.

In the same sense, an obligation of loyalty also results from Art. 24 para. (This states that "Member States shall support actively and unreservedly the common foreign and security policy (CFSP) of the Union in a spirit of loyalty and mutual solidarity (...). They shall refrain from any action contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations".

## CONCLUSIONS

*The Court of Justice of the European Union, as the sole public authority for deciding cases brought before it, has applied and applies the (general principles of) law since the founding of the European Communities (today, the European Union).*

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<sup>29</sup> Ditto.

<sup>30</sup> Ibid, p. 45.

<sup>31</sup> See ECJ, 374/89, *Commission v. Belgium*, 19 February 1991, ECR 1991, 2 (-III), p. 367. The Court of Justice -has often referred to Article 10 TEC (now Article 4 TEU) as a separate source for Member State obligations in the TEC system.

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*If the principles of law were not laid down in the founding Treaties<sup>32</sup>, the Court of Justice has implicitly imposed them by applying them in the resolution of cases, and ultimately by the judgments it has delivered.*

*This led the Lisbon Treaty<sup>33</sup>, the TFEU and the TEU, to lay them down expressly, and they have the same legal value as these Treaties.*

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<sup>32</sup> Treaty establishing the Coal and Steel Economic Community (TCECO), Treaty establishing the European Economic Community, (TCEE) and Treaty establishing the Atomic Energy Economic Community (TEuratom).

<sup>33</sup> Signed on 13 December 2007 and entered into force on 1 December 2009.