

European dynamic instruments: gatekeepers of human rights, freedoms and principles

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EUROPEAN DYNAMIC INSTRUMENTS: GATEKEEPERS OF HUMAN RIGHTS, FREEDOMS AND PRINCIPLES

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1. INTRODUCTION

Past memories of the Second World War atrocities saw the emergence of dynamic instruments fostering the protection of human rights and fundamental freedoms based on the principles of democracy and the rule of law. In Europe, the European Convention on Human Rights (ECHR), signed in Rome on 4 November 1950, was normatively influenced by a resolution of the United Nations General Assembly¹, the 1948 Universal Declaration of Human Rights (UDHR). In essence, the ECHR embeds the European civilisation fundamental values while, at the same time, bestows binding effect to the rights set out in the 1948 Universal Declaration of Human Rights, responsible for paving the way to the adoption of more than seventy human rights treaties at a global and regional level.

The European Convention, as the gatekeeper of human rights, lays down absolute rights, like the right to life or the prohibition of torture which cannot be breached by the States adhered to the Convention. It also protects certain rights and freedoms which *conditio sine qua non* cannot be constrained by law in a democratic society, such as the right to liberty and security or the right to respect for private and family life². As drafted in 1949-1950, the Convention was not an exhaustive codification of fundamental rights, however, it put in practice a dynamic judicial system, created under the auspices of the Council of Europe (CoE) for the protection of the individuals' rights against human rights violations by a contracting State. Since its adoption, the substantive rights catalogue has been supplemented by six Protocols adding new rights. Within the Convention system, the six additional protocols do not amend the Convention as such but require ratification by States that are already party to the Convention which causes a legal perplexity in a way since not all States Parties to the Convention have ratified all additional protocols.

In this respect, the conclusions of the Cologne European Council in June 1999, set the ground for the Charter on Fundamental Rights of the European Union (CFR or the Charter) to include general rights of liberty and equality, fundamental rights that pertain only to the Union's citizens as well as to take account of economic and social rights³. The Charter complements the human rights spectrum by broadening the scope of the rights portrayed within the European Convention and its additional Protocols. Forging ahead and beyond the pre-existing conventional demarcation between civil and political rights on one side, and the socioeconomic rights on the other, the Charter side-lined any presumptive division between these two classifications of rights, and thus has been converted to an inspiring modern instrument with the commitment to respect, safeguard and promote fundamental human rights⁴.

Prompted by the occasion of the European Convention of Human Rights marking its 70th anniversary and the 20 years since the signature of the Charter on Fundamental Freedoms of the European Union, this chapter has a threefold human rights related aim; firstly, to contextualise the fundamental values of European civilisation of the 21th century as these have been encapsulated within the two European dynamic instruments; secondly, to reflect the European human rights advances on the institutional and normative level, and lastly to demonstrate the coexistence and intercomplementarity

¹ Universal Declaration of Human Rights, GA Res. 217 A (III), UN Doc. A/810.

² Council of Europe, *The European Convention on Human Rights, A Living Instrument*, European Court of Human Rights, September 2020, available at: https://echr.coe.int/Documents/Convention_Instrument_ENG.pdf [accessed 1 June 2021].

³ The EU Charter of Fundamental Rights, European Parliament Resolution on the drafting of a European Union Charter of Fundamental Rights (C5-0058/1999 - 1999/2064(COS)), available at:

http://www.ephencms.europarl.europa.eu/cmsdata/upload/c0163edd-f11d-4c55-8aae-ec8166cac3f7/Fontaine_Resolution_Fundamental_Rights_2000_EN.pdf [accessed 1 June 2021].

⁴ K. DZEHTSIAROU, T. KONSTADINIDES, T. LOCK, N. O' MEARA, *Human Rights Law in Europe: The Influence, Overlaps and Contradictions of the EU and the ECHR*, Routledge, 2014, p. 13.

of these two European titans for the protection of human rights and fundamental freedoms which serve as the foundation of justice and peace in the wider world.

2. HUMAN RIGHTS AT THE HEART OF EUROPE

Despite the fact that the initial idea and scope of the European Communities (EC), as an international organisation was mainly to create a Common Market⁵, the ideal of converting Europe's face into a peaceful, united and prosperous continent remained a profound aspiration. For several decades, through a series of binding Treaties which set out the European Union's constitutional framework, no explicit reference to the respect for fundamental rights was made. The focus of the treaties was primarily economic integration and human rights were presumed to be guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which being already in existence, was probably thought sufficient enough to operate as a "Bill of Rights" for Europe⁶.

In this respect, the European Court of Justice (ECJ) in its early decisions with regards to the cases *Stork* and *Geitling*⁷ had rejected the argument that the High Authority wrongly failed to take into account that the decisions had to be assessed from the point of view of German Law. The Court had, in this instance, stated that under article 8 of the ECSC Treaty, the High Authority is only required to apply Community Law and that it is not competent to apply the national law of the Member States. Subsequently, based on the effects of these case laws, national courts raised concerns about conflicts that may occur when the protection of fundamental rights afforded by the Communities' laws were to prevail over domestic law⁸ since divergencies between EU and national law were likely to create conflicts or even incompatibilities. As the level of protection afforded by EU law is greater than that granted by national constitutional law⁹, the potential for EU law to breach fundamental rights would be more probable since the EU legal order and that established within the Member States' domestic law is distinct and thus, proffers a different level of fundamental rights protection¹⁰.

Admittedly, as the Communities' competence and law-making expanded over the years, so did the necessity for people's recognition and protection affected by these laws. The paradox that the Communities had not been parties to the ECHR, unlike its Member States, became a legal requirement under the Lisbon Treaty in 2009, albeit still on negotiations, and means that neither the Communities nor hereinafter the EU could be directly bound by the ECHR provisions. In the meanwhile, the EU's accession to the ECHR will mark a new "level playing field"¹¹ on the human rights sphere across the continent as it will harmonise the interpretations and rulings issued by both Courts, the human rights judicial titans.

2.1. EU Law and the Human Rights Perspective

The time to review the European law and embed the human rights perspective within the European Union had come. While the Court of Justice had affirmed the principle of the EU law primacy

⁵ M. J. GABEL, "European Community". Encyclopaedia Britannica, 28 Sep. 2018, available at:

<https://www.britannica.com/topic/European-Community-European-economic-association>. [accessed 3 June 2021].

⁶ S. DOUGLAS-SCOTT, "The European Union and Human Rights after the Treaty of Lisbon", *Human Rights Law Review*, 11:4, 2011, Oxford University Press, pp. 645-682.

⁷ Case 1/58, *F. Stork & Cie v. High Authority of the European Coal and Steel Community*, 4 February 1959, ECR 17. See also joined cases, Judgment of the Court of 15 July 1960. *Geitling Ruhrkohlen-Verkaufsgesellschaft mbH, Mausegatt Ruhrkohlen-Verkaufsgesellschaft mbH and I. Nold KG v High Authority of the European Coal and Steel Community*. - Joined cases 36, 37, 38-59 and 40-59.

⁸ Fact Sheets on the European Union, *The Protection of Article 2 TEU Values in the EU*, available at: <https://www.europarl.europa.eu/factsheets/en/sheet/146/the-protection-of-fundamental-rights-in-the-eu> [accessed 12 june 2021].

⁹ I. DIMITRAKOPoulos, "Conflicts between EU law and National Constitutional Law in the Field of Fundamental Rights", *Judge of the Council of State of Greece*, available at: <https://www.ejtn.eu/PageFiles/17318/DIMITRAKOPoulos%20Presentation%20%20E2%80%93%20Summary.pdf> [accessed 3 June 2021].

¹⁰ Ibidem.

¹¹ Council of Europe, *European Union Accession to the European Convention on Human Rights-Questions and Answers*, available at <https://www.coe.int/en/web/portal/eu-accession-ehr-questions-and-answers> [accessed 4 June 2021].

over national laws in the *Van Gend en Loos*¹² and *Costa v. ENEL*¹³ decisions, concerns from constitutional courts in place entrusted to safeguard national rights systems, led both the German and Italian constitutional courts, in 1974, to adopt in this effect respective judgments in which their competence in reviewing European law was asserted. Hence, in *Solange*¹⁴ and *Frontini*¹⁵, the unconditional primacy of European law over national constitutional provisions was not accepted. In particular, the German Federal Constitutional Court (FCC) stressed its “guardian” role towards the national constitution and withheld the right to rule on the *Solange* case since no comparable system of rights protection was embedded by a democratic parliament in the Community¹⁶.

In return, the Court of Justice considering the constitutional courts decisions on this matter, in its 1969 *Stauder*¹⁷ case recognised the principle of respect for fundamental rights and guaranteed that it will protect the fundamental rights enshrined in the general principles of Community law, as these resulted from the Member States constitutional traditions and the protection of human rights international treaties in which Member States were signatory parties¹⁸. Certainly, the mere recognition of “fundamental rights” as part of the general principles of community law” did not resolve the issue, as these rights still remained unidentified, and a catalogue of rights had to be contextualised in order to avoid incorporating these fundamental rights within the wider context of general principles.

The first direct reference on the protection of fundamental rights was seen in 1986 Single European Act preamble where the Communities jointly committed to work together in promoting democracy on the basis of fundamental rights recognised in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice¹⁹. Later, at the 1992 Maastricht Treaty, for the first time an explicit reference to the recognition of fundamental rights was made, followed by an association between the Union’s institutions, the ECHR and its Member States to respect these fundamental rights²⁰.

In the following years, the EU competencies were expanded to policies generating a direct impact on fundamental rights. Therefore, the Treaties had to go under a number of amendments in order to make the EU more efficient, transparent and vigorously anchor it to the protection of fundamental rights. The Treaty of Amsterdam (1997), as the third major amendment since the Treaty of Rome in 1957, came to complement the prior gaps, and affirm the European principles upon which the EU was established. Moreover, it set out a procedure to suspend certain of the rights deriving from the *ad hoc* Treaty in cases where the existence of a serious and persistent breach of fundamental rights has taken place by a Member State²¹. The Treaty of Nice (2003) had similarly added a pre-emptive stage, in its Article 7, in the occurrence of “clear risk of a serious breach” by a Member State on the EU values and principles as these are stated in Article 6(1)²². Finally, in 2009, the advent of Lisbon Treaty to the fore, as the latest development in the process to safeguard the fundamental rights in the EU, through its Article 2 TEU, it crystallised the Union’s values towards the respect for human dignity, freedom, democracy and respect for human rights, including the rights of persons belonging to minorities²³.

¹² Case 26/62, *Van Gend & Loos v Netherlands Inland Revenue Administration*, Judgment of the Court of 5 February 1963, ECR 1.

¹³ Case 06/64, *Costa v ENEL*, Judgement of the Court of 15 July 1964, ECR 585.

¹⁴ Case 2 BvL 52/71-*Solange I* decision, BVerfGE 37, 271, 29 May 1974.

¹⁵ Case *Frontini v. Minister delle Finanze* [1974], 2 CMLR 372, Italian Constitutional Court.

¹⁶ B. DAVIES, “Pushing Back: What Happens When Member States Resist the European Court of Justice? A Multi-Modal Approach to the History of European Law”, *Contemporary European History*, August 2012, Vol. 21, No. 3, Towards a New History of European Law, p. 419.

¹⁷ Case 29/69 *Stauder v. City of Ulm*, Judgment of the Court of 12 November 1969, ECR 419.

¹⁸ See cases, *Internationale Handelsgesellschaft v. Einfuhr und Vorratstelle fuer Getreide und Futtermittel* [1974] 2 CMLR 540; Case 4-73, *J. Nold, Kohlen – un Bausstoffgrosshandlung v. Commission of the European Communities*, Judgment of the Court of 14 May 1974, ECR 491; Case 36-75, *Roland Rutili v. Ministre de l'intérieur*, Judgment of the Court 28 October 1975, ECR 1219.

¹⁹ Official Journal of the European Communities, *Single European Act*, No L 169/2, 29 June 1987, available at: https://eur-lex.europa.eu/resource.html?uri=cellar:a519205f-924a-4978-96a2-b9af8a598b85.0004.02/DOC_1&format=PDF [accessed 4 June 2021].

²⁰ Treaty on European Union, Article F, Maastricht, 7 February 1992, https://eur-lex.europa.eu/european-union/sites/default/files/docs/body/treaty_on_european_union_en.pdf [accessed 4 June 2021].

²¹ Article 236 para 2, Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts, Amsterdam 2 October 1997, Office for the Official Publication of the European Communities, 1997.

²² Treaty of Nice amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts, signed at Nice, 26 February 2001, *Official Journal C 080*, 10 March 2001, p. 1-87.

²³ Consolidated version of the Treaty on European Union – Title I Common Provisions – Article 2, *OJ C 236*, 7 August 2012, p. 17.

2.2. The Impact of Lisbon Treaty in the Human Rights Field

In 2009, with the Lisbon Treaty coming into effect, a number of provisions were introduced or even amplified in an effort to strengthen the fundamental rights and principles in the European Union. It bestowed the EU with new powers to promote human rights and consolidate the framework in protecting the citizens' security and even, up to an extent, to conduct a common foreign policy²⁴. For more than 40 years, the fundamental rights status in the EU were under the umbrella of "general principles of law", as stated by the successive versions of Article 6 of the TEU²⁵. Therefore, as it was later amended by the Lisbon Treaty, it obtained a tripartite structure within which it granted recognition to the, until then, non-binding Charter of Fundamental Rights that for nine years was remaining a mere political non-binding declaration²⁶.

Additionally, through the Lisbon Treaty, the EU institutions gained greater powers, especially the European Parliament, which historically has been the vanguard in defending and promoting human rights, not only through its political initiatives, but also by its strong position towards European Community to adopt the European Convention on Human Rights. It also conferred stronger powers to the Court of Justice to protect human rights and individual freedoms through the interpretation of the Charter and other new treaty measures, like those on criminal law and judicial review of the EU agencies actions²⁷.

Moreover, the Treaty it its provisions, encapsulates *inter alia* a legal commitment under which the European Union accession to the European Convention on Human Rights became a legal obligation under Article 6(2)²⁸. The purpose *per se* of its accession to the Convention is centred to the common aspiration of creating a single European legal space and thus, establishing a coherent human rights framework throughout Europe. Within the period 2010 and 2013, a number of extensive negotiations between the 47 Council of Europe Member States and the European Commission had taken place striving to reach to an agreement. Nevertheless, the EU Court of Justice, referring to Protocol 8 relating to Article 6(2) of the TEU on the accession of the Union to the ECHR, concluded in 2014 that the resulting agreement was not compatible with European law as it could disconcert the balance of the Union or the powers of its institutions and could compromise the autonomy of EU law as it fails to have regard to its specific characteristics²⁹.

Finally, reopening the negotiations in October 2019, a series of arrangements were proposed such as an ad hoc group composed of representatives of the 47 Member States of the Council of Europe and a representative of the European Union ("47+1 Group") in order to finalise the legal instruments which will set up the modalities of accession of the EU to the European Convention³⁰, including its participation in the Convention system³¹. Since then, a number of negotiation meetings have followed in a mutual effort to consolidate the accession agreement which will open a new legal era in the human rights field.

²⁴ "Human Rights in the EU", *Open Society EU Paper 1*, Open Society Foundations, 2011, available at: <https://www.opensocietyfoundations.org/uploads/a7403ebb-3b34-4ad6-bf3b-4e78af5f72b1/lisbon-treaty-20110401.pdf> [accessed 7 June 2021].

²⁵ Article 6(3) TEU [2008] declares that: "The Union shall respect fundamental rights, as guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to member states as general principles of Community law".

²⁶ Ibidem: "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 at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties".

²⁷ "Human Rights in the EU", *loc. cit.*

²⁸ Article 6(2) (ex Article 6 TEU) [2008] states that "The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties".

²⁹ Opinion 2/13 by the Court of Justice of the European Union (CJEU) (Full Court), 18 December 2014, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62013CV0002&from=EN>, [accessed 6 June 2021].

³⁰ European Treaty Series - No. 5, *Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14*, Rome, 4.XI.1950, available at: <https://rm.coe.int/1680063765>, [accessed 7 June 2021].

³¹ Council of Europe, *EU accession to the ECHR*, available at: <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/accession-of-the-european-union-to-the-european-convention-on-human-rights>, [accessed 6 June 2021].

3. HUMAN RIGHTS DYNAMICS: A 70-YEAR BUILDUP

Just after the Second World War, the Council of Europe was established with the goal to promote democracy, protect human rights and the rule of law throughout Europe. In its inception, the Council draw up the European Convention for the Protection of Human Rights and Fundamental Freedoms where its material provisions were primarily based on a draft of what was later called the International Covenant on Civil and Political Rights³². The Convention, along with its 11 additional protocols entered into force on September 1953, is a general human rights treaty which represents, to date, one of the most advanced international and European instruments in the human rights protection field.

Marking its 70th anniversary, the Convention stands as a landmark in human rights history and fundamental freedoms which, as mentioned in its preamble, constitutes “the foundation of justice and peace in the world, which are best maintained by an effective political democracy, common understanding and observance of the human rights upon which they depend”³³. In this context, the United Nations Security Council has stated in its resolutions, at several instances, that serious and gross breaches of international human rights and humanitarian law constitute threats to international peace and security³⁴. Thus, ensuring observance of human rights via vigorous judicial control mechanisms, lays out the foundation for greater stability, security and peace.

Over the years, the Convention has been converted into an inspiring instrument not only for the protection afforded to a broad range of rights but also for its anthropocentric approach, which places the human being at the epicentre whilst recognising its right to individual application. In particular, Article 34 of the ECHR³⁵, recognises an unconditional right to a victim of a violation to submit an individual application to the European Court of Human Rights (ECtHR) without prior confirmation to be accepted by the State Parties. The unconditional nature of the ad hoc right has made the Convention to stand out among the other universal or regional instruments by converting the individual into a real “subject” of the system and not a mere user of it³⁶. In this regard, the Court in the case of *Mamatkulov and Askarov v. Turkey*, acknowledging for the first time the binding character of interim measures, held that “the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective, as part of the system of individual applications” and stressed that “any interpretation of the rights and freedoms guaranteed has to be consistent with the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society”³⁷.

Several decades later, at the Nice European Summit in 2000, the EU Charter of Fundamental Rights was proclaimed by three main organs of the Union, epitomising the spirit of the ECHR within the EU premises. The purpose was to consolidate fundamental rights, freedoms and principles whilst rendering them more visible at the European level. Even though the Nice Charter was based on the European Convention and other European and international instruments, it had chiefly a twofold aim; firstly, to increase and strengthen the EU’s responsibilities and culture of rights by compiling in one single document existing rights which would be approved by EU Member States and Institutions and thus, would function as a dynamic tool in reinforcing and respecting citizens’ rights of the EU. Secondly, through the Charter, greater clarity would be provided apropos of the rights, freedoms and principles that the EU had to protect and respect, and also would set clear boundaries over the Union’s powers with regards to citizens fundamental rights³⁸.

3.1. The Normative Character of ECHR

³² Council of Europe, available at: <https://www.coe.int/en/web/human-rights-convention/home>, [accessed 8 June 2021].

³³ Preamble of the European Convention of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950.

³⁴ United Nations, Office on Genocide Prevention and the Responsibility to Protect, Relevant thematic UN Resolutions, available at: <https://www.un.org/en/genocideprevention/prevention.shtml>, [accessed 8 June 2021].

³⁵ Article 34 of the European Convention on Human Rights as amended by Protocols Nos. 11 and 14 and supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16.

³⁶ European Court of Human Rights, Speech by Linos-Alexandre Sicilianos, 5 may 2020, Norway, Kristiansand, available at: https://echr.coe.int/Documents/Speech_20200918_Sicilianos_Conference_70_years_Convention_FRA.pdf [accessed 8 June 2021].

³⁷ *Mamatkulov and Askarov v Turkey* [GC], 46827/99 and 46951/99, (ECtHR), 4 February 2005, para 101. See also, *mutatis mutandis, Klass and others v. Germany*, judgment of 6 September 1978, Series A no. 28, p. 18, para 34.

³⁸ L. GOLDSMITH Q.C., “A Charter of Rights, Freedoms and Principles”, *Common Market Law Review*, 38, 2001, pp. 1201-1216.

The European Convention has been a living instrument on the grounds that, over the years, it has received through its Court's case-laws, an evolutive interpretation and has been continuously adapted to reflect changes across societies which justly qualify the Convention, as being a modern text. From the onset of its creation in 1959, the European Court of Human Rights (ECtHR) has delivered a number of rulings ensuing changes to legislation, hence contributing to strengthening the rule of law in Europe. The evolutive interpretation of the Convention emerged in 1978 in the case of *Tyrrer v UK*, where the Court stated that "it must recall that the Convention is a living instrument which must be interpreted in the light of present-day conditions"³⁹. In fact, through The *Tyrrer case*, the Convention enshrined in its basic characteristics the "very essence of which is respect for human dignity and human freedom"⁴⁰ while at the same time managed to respond and adapt to a changing environment. Therefore, following the *Tyler* judgment, the evolutive doctrine has become one of the fundamental pillars of Strasbourg case-law, closely connected with the principle of effectiveness, which allows for the Convention to be interpreted and applied in a way that makes its rights practical and effective⁴¹.

The Convention, as interpreted and applied by the ECtHR, had a significant impact in domestic law and has been incorporated into most branches of the States Parties national law. For instance, in Belgium, judges have repeatedly chosen to confer supra-legislative status on Convention rights with the effect of direct applicability. The Spanish Constitutional Court has made efforts to enforce the ECHR as a quasi-constitutional body of law, invalidating any statutes that violate the Convention as being unconstitutional. The Dutch Supreme Court has directly enforced the ECHR and has incorporated it as a *de facto* Bill of Rights. Similarly, Norway and Sweden have adopted a comprehensive Bill of Rights formed under the ECHR pattern and moreover have stated that laws shall be interpreted and applied in light of international treaties. In the case of UK, litigants may plead Convention rights against any public authority, under the 2000 Human Rights Act (HRA) and courts may enforce the ECHR against all but conflicting Parliamentary statutes⁴². Finally, in Italy, Courts have demonstrated reluctance in recognising the Convention's primacy over national law, nevertheless, the Italian Constitutional Court, in its 2007 ruling declared the unconstitutionality of a statute as it was found that it contravened Article 1 of Protocol no. 1 and clarified through Article 117 para 1 of the Italian Constitution, the Convention's efficacy in the domestic legal system⁴³.

The ECtHR has invested great effort in harmonising human rights standards, considering the existing variation in legal systems and traditions throughout Europe. Harmonisation is not a reference to uniformity but through the margin of appreciation⁴⁴ doctrine and other tools, attempts to coordinate and balance different legal systems and diverse societies. Another methodological tool to achieve harmonisation is through the European consensus. When consensus between member states exists then the doctrine cedes its place. Together the ECtHR and the Convention have managed to establish, over the years, a common body of rules at the pan-European level based on fundamental values and principles. Democracy is without doubt the core of these values, and a fundamental feature of the European public order⁴⁵, apparent in the Preamble of the Convention which establishes a distinct connection between the Convention and democracy, ensured by an effective political democracy, common understanding and observance of human rights⁴⁶. Additionally, Articles 8, 9, 10 and 11 of the ECHR require that interference with the exercise of the rights they enshrine must be assessed by the

³⁹ ECHR, judgment of 25 April 1978, *Tyrrer v. UK*, No. 5856/72, para 31.

⁴⁰ ECHR, judgment of 11 July 2002, *Christine Goodwin v. UK*, No. 28957/95, para 90. See, *inter alia*, *Pretty v. the United Kingdom*, No. 2346/02, Judgment of 29 April 2002, para 62, and *Mikulić v. Croatia*, No. 53176/99, Judgment of 7 February 2002, para 53.

⁴¹ R. LAWSON, "A Living Instrument: The Evolutive Doctrine-Some Introductory Remarks" in *The European Convention on Human Rights: living instrument at 70, Dialogue Between Judges*, European Court of Human Rights, Council of Europe, 2020.

⁴² H. KELLER, A. STONE SWEET, "Assessing the Impact of the ECHR on National Legal Systems" In H. KELLER, A *Europe of Rights: the impact of the ECHR on national legal systems*, Cary (N.C.), USA, pp. 677-712.

⁴³ F. BIONDI DAL MONTE, F. FONTANELLI, "The Decisions No.348 and 349/2007 of the Italian Constitutional Court: The Efficacy of the European Convention in the Italian Legal System", *German Law Journal*, Vol. 9, No. 7, 2008, pp. 889-932.

⁴⁴ The margin of appreciation doctrine first appeared in the Commission's report in 1958 in the case of Greece against the United Kingdom over alleged human rights violations in Cyprus. See, *Greece v. the United Kingdom*, CoE, No. 299/75, Report of the European Commission of Human Rights, 8th July 1959; *The Cyprus Case (Greece v. the United Kingdom, (1958-1959)*, 2 *Yearbook of the European Convention on Human Rights*, pp. 172-197; H.C. Yourow, *The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence*, The Hague/Boston/London: Kluwer, 1996.

⁴⁵ *Loizidou v. Turkey*, 40/1993/435/514, Council of Europe: European Court of Human Rights, 23 February 1995, available at: <https://www.refworld.org/cases/ECHR/402a07c94.html> [accessed 10 June 2021]

⁴⁶ *Klass and others v. Germany*, judgment of 6 September 1978, Series A no. 28, p. 18, para 34.

yardstick of what is “necessary in a democratic society”. Democracy thus appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it⁴⁷.

Finally, the rule of law is another fundamental value enshrined in the Convention. The Court, in a number of cases has stated that the rule of law underpins the whole convention system⁴⁸, inherent in almost all of its provisions. Article 6 of the ECHR, the right to a fair trial typifies the rule of law as it reflects the ideal of justice and of fair balance. In this context, Article 47 of the Charter of Fundamental Rights of the European Union guarantees the right to a fair trial and unlike Article 6 of the ECHR, does not confine this right to disputes relating to “civil rights and obligations” or to “any criminal charge” and does not refer to the “determination” of such⁴⁹. To this effect, the European Court of Justice (ECJ) held in *Bernard Denilauler v. SNC Couchet Frères* that provisional measures given *ex parte* without hearing the defendant could not be recognised according to its case-law⁵⁰.

3.2. Nice Charter: Beyond the General Principles

For over 40 years, fundamental rights in the EU were under the rubric of “general principles of law”⁵¹. Nevertheless, the ECHR had a special role in the ECJ’s fundamental rights protection approach to the extent that in the case of *Bosphorus*⁵², the Advocate General Jacobs⁵³ stated in its opinion that respect for fundamental rights forms part of the general principles of Community law, and that in ensuring respect for such rights the Court takes account of the constitutional traditions of the Member States and of international agreements, notably the Convention for the Protection of Human Rights and Fundamental Freedoms, which has special significance in that respect.

The proclamation of the Nice Charter in 2000 had mainly a twofold purpose. Firstly, it was conceived with the purpose to make the existing rights embedded under the general principles more visible and explicit and secondly to clarify the limits of the Union’s powers by setting clear the restrictions on its remit concerning the fundamental rights matter. In this respect, Article 51 determining the Charter’s scope, establishes that primarily applies to Union’s institutions and bodies, in compliance with the principle of subsidiarity and in keeping with Article 6(2) of the TEU, which required the Union to respect fundamental rights. With regards to the Member States, it follows from the case-law of the Court of Justice that the requirement to respect fundamental rights defined in the Union’s context, has a binding character only when the Member States act within the scope of the Union law⁵⁴. However, for nine years the Charter was undermined owing to its lack of legal binding effect. The CJEU, on the other hand, cited it for the first time in 2006 in the *European Parliament v. Council of the European Union* judgment, stating that although the Charter is not a legally binding instrument, the Community did acknowledge its importance, in the second recital in the preamble to the Directive which observes the principles recognised not only by Article 8 of the ECHR but also in the Charter⁵⁵.

In essence, the Charter draws together rights from a variety of sources like the ECHR, the United Nations and the International Labour Organisation (ILO) which prevent it from running the double risk of creating, on one hand, inconsistencies with the areas covered by these instruments and on the other, to avoid creating a parallel and competing system of human rights protections⁵⁶. Thus, the Charter sets out in a single document, the whole range of civil, political, economic and social rights of European citizens and all persons residing in the EU. It consists of 50 rights divided into six sections, namely: dignity, freedoms, equality, solidarity, citizen’s rights and justice while covers traditional

⁴⁷ *United Communist Party of Turkey and Others v. Turkey*, 19392/92, Council of Europe: European Court of Human Rights, 30 January 1998, available at: <https://www.refworld.org/cases/ECHR/4721cf132.html> [accessed 10 June 2021]

⁴⁸ See cases, *Micallef v. Malta*, 17056/06 [2008] ECHR 41, 15 January 2008; *Golder v. United Kingdom*, Judgment of 21 February 1975, Series A no. 18, p. 16, para 34.

⁴⁹ *Micallef v. Malta*, 17056/06 [2009], Judgment of the 15 October 2009 [GC].

⁵⁰ *Bernard Denilauler v. SNC Couchet Frères*, ECJ, Case C 125/79, Judgment of the Court 21 May 1980, ECR 1553.

⁵¹ Article 6(3) TEU, [2008] OJ C 115/15.

⁵² *Bosphorus Hava Yollari Turizm ve Ticaret AS v Minister for Transport, Energy and Communications and others*, Case C-84/95, Judgment of the Court of 30 July 1996, ECR I-3953.

⁵³ Opinion of Advocate General Jacobs, 30 April 1996, Case C-84/95, ECR I-3953.

⁵⁴ EU Charter of Fundamental Rights, General Provisions, Article 51, *Official Journal of the European Union*, C 303/17, 14.12.2007; Case 5/88 Wachauf [1989], ECR 2609; Case C-260/89, ERT [1991] ECR I-2925; Case C-309/96 Annibaldi [1997] ECR I-7493.

⁵⁵ *European Parliament v. Council of the European Union*, Case C-540/03, Judgment of the Court [GC] of 27 June 2006, ECR I-5769, para 38.

⁵⁶ J. POLAKIEWICZ, *Speeches and Presentations of the Director: Europe’s multi-layered human rights protection system: challenges, opportunities and risks*, Council of Europe, Lecture at Waseda University Tokyo, 14 March 2016.

human rights like the right to life, prohibition of torture and the right to a fair trial. Moreover, the Charter encompasses economic and social rights and principles like the right to fair and just working conditions and other present-time rights concerning cloning and data protection which were not anticipated at the ECHR in 1950. Therefore, to reflect the modern society, it incorporates some "third generation" rights like data protection, guarantees on bioethics and transparent administration which makes it innovative since the same instrument encapsulates, not only economic and social rights but also more traditional civil and political rights presenting rights indivisibility, interdependence and interrelation⁵⁷.

In the light of drafting adjustments made to the text of the Charter and of further developments of Union law, the Praesidium of the Convention which drafted the Charter prepared and, at a later stage, updated further official explanations which despite not having the status of law, are considered as valuable tools of interpretation in clarifying the provisions of the Charter⁵⁸. These official explanations elucidate which rights are the same as in the European Convention. Article 47 (2) and (3) CFR, with regards to the right to an effective remedy and to a fair trial, even though in Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations, nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union⁵⁹.

4. THE COEXISTENCE OF THE TWO EUROPEAN TITANS IN THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The Charter of Fundamental Rights not only coexists with the European Convention but also complements it. As announced in its preamble, the Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights⁶⁰.

Most of the rights enshrined in the Charter are borrowed from the ECHR and its Court case law. As stated in paragraph 3 Article 52 CFR, to the extent that these rights correspond to rights guaranteed by the Convention, it is done so that the meaning and scope of those rights remain the same and in accordance with the European Convention⁶¹. Notwithstanding, some rights have been updated like Article 7 CFR which states communications as opposed to correspondence. Although Article 52(3) of the CFR does not explicitly refer to the ECtHR case law, however, in *J. McB. v. L.E.* the CJEU, in its judgment held that given that Article 8(1) of the ECHR is identical to that of the said Article 7 of the CFR, except that it uses the expression "correspondence" instead of "communications", Article 7 of the Charter must be given the same meaning and scope as Article 8(1) of the Convention, as interpreted by the case law of the European Court of Human Rights⁶². Hence, the Charter, through Article 52(3) establishes a strong connection and maintains consistency between its own rights and the European Convention while proffers to both Courts a reason to maintain a similar positioning in their approach which can be reinforced when the Union accedes to the ECHR.

The Charter has also broadened the scope of the rights guaranteed by the Convention and concurrently has shown evidence of innovation. Some examples are Article 47 of the CFR, the right to

⁵⁷ P. NEVES-SILVA, G.I. MARTINS, L. HELLER, "Human rights' interdependence and indivisibility: a glance over the human rights to water and sanitation", *BMC Int Health Hum Rights* 19, 14, 2019.

⁵⁸ Explanations relating to the Charter of Fundamental Rights, *OJ C* 303, 14.12. 2007. See also Article 52 para 7 of the CFR "The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the Courts of the Union and of the Member States".

⁵⁹ Explanations relating to the Charter of Fundamental Rights, *OJ C* 303, 14.12. 2007, Article 47, para 2 and 3. See case, *Les Verts v. European Parliament*, Case 294/83, Judgement of 23 April 1986, *ECR* 1339.

⁶⁰ Charter of Fundamental Rights of the European Union, *Official Journal of the European Communities*, C 364/1, 18.12.2000.

⁶¹ Article 52 para 3 of the CFR states: In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

⁶² Case C-400/10 PPU, *J. McB. v. L.E.*, [2010], *ECR* I-8965, para 53. See by analogy, Case C-450/06, *Varec* [2008], *ECR* I-581, para 48.

an effective remedy and to a fair trial which has widened the scope of Article 6 and 13 of the ECHR. With regards to the innovation, the Charter has incorporated Article 8, the right to the protection of personal data, Article 19, protection in the event of removal, expulsion of extradition, the principle of non-refoulement, in case there is a serious risk for the individual to be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. These are some of the examples which found themselves absolutely consistent with the safeguards for existing human rights afforded by Article 53 of the Convention which sequentially is in accordance with Article 53 of the CFR and its level of protection.

Since the Lisbon Treaty in 2009 conferred on the Charter the status of primary law of the EU, the CJEU has made a more frequent reference to it. In 2011, delegations from the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) were met to discuss subjects of common interest. In the subject related to the application of the Charter, it was commonly observed that it has become of primary importance in the recent CJEU case law. The Charter, admittedly, has become the reference text and the starting point for the CJEU's assessment of the fundamental rights and thus, important to ensure greater coherence between the Convention and the Charter⁶³.

4.1. The Impact of the Human Rights Protection on the Case Law

The raise of standards on human rights protection, had inevitably an impact on the case law of both Courts. As mentioned earlier, the CJEU has made the Charter its text of reference for many of its judgments, nevertheless, human rights instruments are used in a combined way in order to reach superior protection. In the *Scoppola v. Italy*⁶⁴ case, the ECtHR held that mention should be made on the proclamation of the European Union's Charter of Fundamental Rights. However, in its partly dissenting opinion, Judge Nicolaou, stated that conflict of opinion, in this instance, should not be attributed to a difference in the interpretative approach to Article 7(1) of the Convention. The Court profess adherence to the relevant international rules embodied in Articles 31 and 32 of the 1969 Vienna Convention on the law of Treaties and the view that, "take of Article 7(1) does not call in question the Court's case law, to which the majority briefly refer, either on reversing previous decisions, where necessary, or of adapting to changing conditions and responding to some emerging consensus on new standards since, as often emphasised, the Convention is a living instrument requiring a dynamic and evolutive approach that renders rights practical and effective, not theoretical and illusory"⁶⁵. Nevertheless, no judicial interpretation, however creative, can be entirely free of constraints and thus it is necessary to keep within the limits set by the Convention's provisions, as the Court had pointed out in *Johnston and Others v. Ireland*⁶⁶.

In respect of the scope of protection of the Charter, Article 52(3) CFR aims to guarantee consistency between the Charter itself and the ECHR, not only by respecting the wording but also by taking into consideration the ECtHR case law in order to ensure the coexistence of both texts and thus providing coherent protection of human rights. In this context, the judicial dialogue among the two Courts in the following cases, *N.S. v. Secretary of State for the Home Department*⁶⁷ and *M.S.S. v. Belgium and Greece*⁶⁸ is an eloquent example. The similar approaches taken by the two courts in their respective judgments on the asylum procedure and the reception conditions of asylum seekers illustrates the coordinated action to improve the efficiency of the system and the effective protection of fundamental rights⁶⁹.

Be that as it may, the CJEU still maintains its autonomy and primacy within the EU legal order, at least, until the negotiations for its accession to the ECHR are finalised. Presently, it seems that although the CJEU has opened a dialogue with the ECtHR, it does not omit to underline the distinctiveness of

⁶³ European Court of Human Rights, "Joint Communications from Presidents Costa and Skouris", Press Release No 75, 2011, available at : https://www.echr.coe.int/Documents/UE_Communication_Costa_Skouris_ENG.pdf [accessed 14 June 2021].

⁶⁴ Case of *Scoppola v. Italy* (No.2), Application no. 10249/03, Strasbourg, 17 September 2009, Partly Dissenting Opinion of Judge Nicolaou, Joined by Judges Bratza, Lorenzen, Jočienė, Villiger and Sajó.

⁶⁵ Ibidem.

⁶⁶ *Johnston and Other v. Ireland*, Application no. 9697/82, Strasbourg, 18 December 1986, para 53, Series A no. 112.

⁶⁷ Joined Cases, N. S. (C 411/10) v. Secretary of State for the Home Department and M. E. (C 493/10) and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform, C-411/10 and C-493/10, European Union: Court of Justice of the European Union, 21 December 2011, available at: <https://www.refworld.org/cases/ECJ/4ef1ed702.html> [accessed 15 June 2021].

⁶⁸ *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, available at: <https://www.refworld.org/cases/ECHR/4d39bc7f2.html> [accessed 15 June 2021].

⁶⁹ Joined cases, *op. cit.*, para 90.

the two European human rights regimes. In the case of *Servet Kamberaj*⁷⁰, the CJEU stated that under Article 6(3) TEU, fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, are to constitute general principles of the Union's law. Any reference made by Article 6(3) TEU to the ECHR does not require the national court, in case of conflict between the provision of national law and the ECHR, to apply directly the Convention's provisions, disapplying the provision of national law incompatible with the *ad hoc* Convention. In respect of the asylum cases, the CJEU has followed a more versatile approach, at times following the jurisprudential approach of the ECtHR, as in the case of *N. S.* or has opted for not taking into consideration the ECtHR case law, as occurred in *Samba Diouf*⁷¹ case, where the domestic court in its question had only referred to the protection of the right to an effective remedy stated in the Directive 2005/85 and Articles 6 and 13 of the ECHR, the CJEU did not consider the ECHR provisions compatibility nor did it scrutinise the Strasbourg case law in this instance⁷². Therefore, remaining gaps and inconsistencies in the Union's human rights system could be addressed through well-established case laws and clarity of the EU rules.

4.2. Gatekeeping Fundamental Human Rights in the EU Legal Order

Recent case law within the European Union legal system raises interesting questions in respect of the future development of human rights dynamics in gatekeeping fundamental rights, freedoms and principles. *Ruiz Zambrano*⁷³ is a landmark case as it evidences recent developments in the case law relating to the Treaty provisions on EU citizenship. In this instance, the referring court had asked whether the provisions of the TFEU on European Union citizenship were to be interpreted as meaning that they conferred on a relative in the ascending line who is a third country national, upon whom his minor children, who are EU citizens, are dependent, a right of residence in the Member State of which they are nationals and reside, and also exempt him from having to obtain a work permit in that Member State.

The ECJ stated at the outset that Article 3(1) of Directive 2004/38, entitled "beneficiaries", was not applicable to the case at hand, since that provision applies to "all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members"⁷⁴. Subsequently, the ECJ held that, since Mr Ruiz Zambrano's second and third children possessed Belgian nationality, the conditions for the acquisition of which it was for the Member State in question to lay down, they undeniably enjoy that status under Article 20 TFEU which confers the status of citizens of the Union on every person holding the nationality of a Member State. The Court, at several times, has stated that citizenship of the Union is intended to be the fundamental status of nationals of the Member States⁷⁵ and thus, Article 20 TFEU precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union⁷⁶. Therefore, for the *ad hoc* case, it meant that Mr Zambrano, being the father of two Belgian minors, was the receptor of a derivative right to reside and work in Belgium, despite the fact that his children had never left the Belgian territory.

To this effect, the ECJ reasoned that a refusal to grant a right of residence to a third country national with dependent minor children, citizens of the Union, would lead to a situation where those children would have to leave the territory of the Union to accompany their parents. Similarly, if a work permit were not granted, with no sufficient sources to provide for himself and his family would also result in the children having to leave the Belgian territory and consequently, those citizens of the Union would be unable to exercise the substance of the rights conferred on them by virtue of their status as citizens of the Union⁷⁷. Interestingly, the advocate general, AG Sharpston, in her opinion, raised several

⁷⁰ *Servet Kamberaj v Istituto per l'Edilizia Sociale della Provincia autonoma di Bolzano (IPES) and Others*, Case C-571/10, Judgment of the Court (GC) 24 April 2012, para 60 and 63.

⁷¹ Case C-69/10, *Brahim Samba Diouf v Ministre du Travail, de l'Emploi et de l'Immigration*, [2011], ECR I-07151.

⁷² F. IPPOLITO, S. VELLUTI, *The Relationship between the CJEU and the ECtHR: the case of asylum*, in K. Dzehtsiarou, T. Konstadinides, T. Lock, and N. O'Meara, (eds.) *Human rights law in Europe: the influence, overlaps and contradictions of the EU and ECHR*. Routledge Research in Human Rights Law. Routledge, London, pp. 156-187.

⁷³ Case C-34/09, *Ruiz Zambrano v. Office National de l'emploi (ONEm)*, [GC], 8 March 2011, ECR I-01177.

⁷⁴ Ibidem, para 39.

⁷⁵ Ibidem, para 40 and 41.

⁷⁶ Ibidem. See also Case C-135/08, *Janko Rottmann v. Freistaat Bayern*, [GC], 2 March 2010, ECR I-01449, para 42.

⁷⁷ Ibidem, para 44.

questions on what Union citizenship entails and whether does it look forward to the future in order to define the rights and obligations that it confers bringing something more radical, “true citizenship” carrying with it a uniform set of rights and obligations, in a Union under the rule of law in which respect for fundamental rights must necessarily play an integral part⁷⁸. Hence, AG Sharpston, argued that EU fundamental rights should protect the European citizen in all areas of EU competence irrespective of whether such competence had actually been exercised.

The *Janko Rottmann*⁷⁹ which preceded the *Ruiz Zambrano* case is considered as the founding stone which paved the way towards the unfettering of EU citizenship from the limits intrinsic in the right to free movement. Dr Rottmann was born at Graz, Austria, and was by birth a national of the Republic of Austria. In 1995, he transferred his residence to Munich, Germany, while being the subject of judicial investigations in Austria. In 1997, Austria issued a national warrant for its arrest. In 1998, Dr Rottmann applied for German nationality, but during the naturalisation procedure he failed to mention the proceedings against him in Austria. In accordance with Austrian law, his naturalisation in Germany had the effect of causing him to lose his Austrian nationality. Nevertheless, in 1999, Austria informed Germany of the arrest warrant issued against Dr Rottmann and subsequently, Germany revoked his nationality since Dr Rottmann, by withholding this information, had obtained German nationality by deception. Due to the fact that Dr Rottmann had lost his original nationality and the German one was revoked, he became stateless.

After Dr Rottmann challenged the German courts, the referring court asked the ECJ to ascertain whether it is contrary to EU law and in particular to Article 17 EC, now Article 20 TFEU, for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation and obtained by deception inasmuch as that withdrawal deprives the person concerned of the status of citizen of the Union and of the benefit of the rights attaching thereto by rendering him stateless, acquisition of that nationality having caused Dr Rottmann to lose the nationality of his Member State of origin⁸⁰. The ECJ, in this instance, held that it is clear that the situation of a citizen of the Union who, like the applicant in the main proceedings, is faced with a decision withdrawing his naturalisation, adopted by the authorities, of one Member State, and placing him, after he has lost the nationality of another Member State that he originally possessed, in a position capable of causing him to lose the status conferred by Article 17 EC and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of the European Union law⁸¹.

In reaching this conclusion, the ECJ reiterated that citizenship of the Union is intended to be the fundamental status of nationals of the Member States and by stressing the coherence within the legal order, held that in keeping with the general principle of international law, no one is arbitrarily to be deprived of his nationality, and that this principle has been reproduced in Article 15(2) of the Universal Declaration of Human Rights and in Article 4(C) of the European Convention on nationality. Hence, when a State deprives a person of his nationality because of his acts of deception, if legally established, that deprivation cannot be considered to be an arbitrary act⁸².

Therefore, the Court in the context of the citizenship, centres more on the status of a citizen of the Union as such rather than on free movement *per se*, while, at the same time, it does not omit to bring in relevant elements outside the EU legal realm to affirm the fundamental human rights, freedoms and principles.

5. CONCLUSION

The synergy between the European Convention of Human Rights and the Charter of Fundamental Freedoms evidently shows the way forward by widening the scope of human rights protections and by opening a judicial dialogue between Strasbourg and Luxembourg. Although the Charter has borrowed about half of its rights from the European Convention, they have been given the same meaning and content in order to build a coherent and harmonious approach to the vindication of human rights. Undoubtedly, the Convention has a significant presence within national legal orders, even though this presence, occasionally, might be resisted or opposed. Since its inception, the

⁷⁸ Case C-34/09, *Opinion of Advocate General Sharpston*, [2010], ECR I-01177, para 3.

⁷⁹ Case C-135/08, *Janko Rottmann v. Freistaat Bayern*, [GC], 2 March 2010, ECR I-01449.

⁸⁰ *Ibidem*, para 36.

⁸¹ *Ibidem*, para 42.

⁸² *Ibidem*, para 43 and 53.

Convention has elicited to a significant extent, considerable structural and procedural innovation, *inter alia* the development of mechanisms for coordinating national law and the Convention, as the latter is a living modern instrument which dynamically interprets in the light of present-day conditions. Its provisions are applied to issues which were completely unforeseeable at the time of its adoption and thus has managed to touch upon issues related to new technologies, bioethics, or environment, or even to societal questions relating to terrorism or migration.

Finally, through the accumulation of incremental adjustments to the demands of the ECtHR along with the Charter as a fundamental document of the EU, deep changes have occurred in the European Government which seeks to develop its own sphere of political and juridical legitimacy. Nevertheless, the EU accession to the ECHR will mark a new era of fundamental rights in Europe as it will result to a progressive intersection of the human rights regime.