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Fundamental Rights in the Practice of the European Court of Justice

„Such is thy name with this my verse entwined;
And long as kinder eyes a look shall cast
On Harold's page, Ianthe's here enshrined
Shall thus be first beheld, forgotten last:
My days once numbered, should this homage past
Attract thy fairy fingers near the lyre
Of him who hailed thee, loveliest as thou wast,
Such is the most my memory may desire;
Though more than Hope can claim, could Friendship
less require?”

(Byron: TO IANTHE)

Long before the signing of the Charter of Fundamental Rights, the case law of the European Court of Justice¹ was a very important layer of defense for fundamental rights. The European Court of Justice went step by step, following decision after decision, to crystallize the legal regulation of fundamental rights. The first experiment to acknowledge fundamental human rights by the European Court of Justice was in the Stauder case. The Court declared that the fundamental human rights are involved in community law, henceforth, they are under the protection of the Court and thereby, there is no way to interpret them in any opposite way². The other famous case was the case of the Internationale Handelsgesellschaft, also known as Solange I. In this case, the Court made it crystal clear, that the respect of fundamental rights is under the protection of the Court, and the national traditions of Member States also inspire such laws. The first reference to the internationally signed treaties was in the Nold case,³ so those gave

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¹ See in historical retrospect: GOMBOS, KATALIN: *Az alapjogok helyzetének változása az Európai Bíróság joggyakorlata tükrében*. [Change in the situation of fundamental rights in the light of jurisprudence of the European Court of Justice]. In: *Jogtudományi közlöny*, 2/1010. pp. 90–97.

² 29/69 Erich Stauder v Ville d'Ulm – Sozialamt. ECLI:EU:C:1969:57.

³ 4/73 J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities. ECLI:EU:C:1974:51.

an inspiration for community law, as well. In the Rutili case,⁴ there was a reference of the Convention for the Protection of Human Rights and Fundamental Freedoms. When the European Court of Justice investigated the legality of community actions in the Hauer case,⁵ they referred to a former action. In the Elliniki Radiophonia verdict,⁶ the European Court of Justice exposed its opinion of using Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Several other international convention had been mentioned by the European Court of Justice in its verdicts, so it was explained that the International Covenant on Civil and Political Rights is one of those documents that are in favor of defending the fundamental human rights, that is being taken into consideration when they are using the general principles of community law.⁷ The newest trend in the practice of the European Court of Justice is that it is no longer taking only the Convention for the Protection of Human Rights and Fundamental Freedoms, but rather accepts the practice of the European Court of Human Rights in Strasbourg and follows its interpretation.⁸ When a fundamental right is violated during the use of a law of the Union, it directly results in the look-up of the practice of the European Court of Human Rights.

The judgments of the European Court of Justice not only contain signs of the level of legal regulation but there are guidelines regarding the content of specific fundamental rights, as well.⁹ For example, in the Stauder case,¹⁰ the questions of equality and the protection of personal sphere came up this way. The Prais case¹¹ involved the question of the free choice of faith, where the petitioners were saying that their aforementioned right was violated. In the case of C-540/03 European Parliament v European Council¹² or in the Carpenter and Akrich cases,¹³ the protection of family life and marriage came up as debatable topics. The case of Ilonka Sayn-Wittgenstein v Landeshauptmann von Wien¹⁴ brings up the question of name-bearing in regards of citizen rights. The National Panasonic case¹⁵ concerns fundamental rights, as well. In this case, the validity of a committed Committee audit at a company came up, including fundamental rights of

⁴ 36/75 Roland Rutili v Ministre de l'intérieur. ECLI:EU:C:1975:137.

⁵ 44/79 Liselotte Hauer v Land Rheinland-Pfalz. ECLI:EU:C:1979:290.

⁶ C-260/89 Elliniki Radiophonia Tiléorassi AE and Panellinia Omospondia Syllogon Prossopikou v Dimotiki Etairia Pliroforissis and Sotirios Kouvelas and Nicolaos Avdellas and partners. ECLI:EU:C:1991:254

⁷ See for example: 374/87 Orkem v Commission of the European Communities. ECLI:EU:C:1989:387, 5/88 Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft. ECLI:EU:C:1989:321. para. 31., 297/88 and C-197/89 Massam Dzodzi v Belgian State. ECLI:EU:C:1990:360. para. 68. and C-249/96 Lisa Jacqueline Grant v South-West Trains Ltd. ECLI:EU:C:1998:63. para. 44.

⁸ C-540/03 European Parliament v Council of the European Union. ECLI:EU:C:2006:429. para. 54. The European Court of Human Rights has vast legal material. In the future, it is expected that the European Court will use more and more often these materials. Because of length problems, this won't be demonstrated, for more, see: BERGER, VINCENT.: *Legal methods of the European Court of Human Rights*. Budapest, 1999.

⁹ WELLER, MÓNKA.: *Human rights in the practice of the court of Luxembourg*. In: Acta humana: Human rights declarations; 2005/ 2. pp. 64–75.

¹⁰ 29/69 Erich Stauder v Ville d'Ulm – Sozialamt. ECLI:EU:C:1969:57.

¹¹ 130/75 Vivien Prais v Council of the European Communities. ECLI:EU:C:1976:142.

¹² C-540/03 European Parliament v Council of the European Union. ECLI:EU:C:2006:429.

¹³ C-60/00 Mary Carpenter v Secretary of State for the Home Department. ECLI:EU:C:2002:434, C-109/01 Secretary of State for the Home Department v Hacene Akrich. ECLI:EU:C:2003:491. para. 59.

¹⁴ C-208/09 Ilonka Sayn-Wittgenstein v Landeshauptmann von Wien. ECLI:EU:C:2010:806.

¹⁵ 136/79 National Panasonic (UK) Limited v Commission of the European Communities. ECLI:EU:C:1980:169.

businesses and the protection of private apartments. A similar problem has occurred in the Dow Benelux NV case,¹⁶ in which, regarding competition law, business premises have been breached. The Elliniki Radiophonia Tileorassi AE case¹⁷ alongside with the Laserdisken ApS v Kulturministerit case are dealing with the question of freedom of speech. The right of free gathering is concerned in the Bosman¹⁸ and Montecatini¹⁹ cases. The European Court of Justice has declared in several occasions that the right of free gathering can be temporarily suspended – based on lawful reasons – if the suspension or restriction does not endanger the law itself. Questions regarding property laws have come up in the Regione autonoma Friuli-Venezia Giulia case, in the ERSA²⁰ case, in the Alliance for Natural Health and partners²¹ case and in the infamous Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities case,²² also known as “terrorist” cases. The fundamental right of the privacy of mails was investigated by the European Court of Justice in the AM & S case.²³ The restraint of discrimination was the subject of the questions regarding the S. Coleman and Attridge Law, Steve Law case,²⁴ which reached a verdict on 17th July 2008. The banning of women-men discrimination was on plate in the severally quoted Defrenne case.²⁵ The Commission of the European Communities v Republic of Austria case²⁶ alongside with the ADBHU case,²⁷ the Commission of the European Communities v Kingdom of Denmark case,²⁸ the Outokumpu case²⁹ and the Commission of the European Communities v Council of the European Union cases³⁰ were involved in the questions regarding environmental protection. The Sayn-Wittgenstein case³¹ brought up the probable violation of the rights of private life and free choice of name-wearing. The Court was dealing with the questions of data privacy regarding the

¹⁶ 85/87 Dow Benelux NV v Commission of the European Communities. ECLI:EU:C:1989:379

¹⁷ C-260/89 Elliniki Radiophonia Tileorassi AE and Panellinia Omospondia Syllogon Prossopikou v Dimotiki Etairia Pliroforissis and Sotirios Kouvelas and Nicolaos Avdellas and partners. ECLI:EU:C:1991:254

¹⁸ C-415/93 Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman. ECLI:EU:C:1995:463. para. 79.

¹⁹ C-235/92P Montecatini SpA v Commission of the European Communities. ECLI:EU:C:1999:362. para. 137.

²⁰ C-347/03 Regione autonoma Friuli-Venezia Giulia and Agenzia regionale per lo sviluppo rurale (ERSA) v Ministero delle Politiche Agricole e Forestali. ECLI:EU:C:2005:285. para. 119.

²¹ C-154/04 The Queen, on the application of Alliance for Natural Health and Nutri-Link Ltd v Secretary of State for Health (C-154/04) and The Queen, on the application of National Association of Health Stores and Health Food Manufacturers Ltd v Secretary of State for Health and National Assembly for Wales (C-155/04). ECLI:EU:C:2005:449. para. 126.

²² C-402/05 P Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities. ECLI:EU:C:2008:461.

²³ 155/79 AM & S Europe Limited v Commission of the European Communities. ECLI:EU:C:1982:157

²⁴ C-303/06 S. Coleman v Attridge Law and Steve Law. ECLI:EU:C:2008:415.

²⁵ 43/75 Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena. ECLI:EU:C:1976:56

²⁶ C-320/03 Commission of the European Communities v Republic of Austria. ECLI:EU:C:2005:684

²⁷ 240/83 Procureur de la République v Association de défense des brûleurs d'huiles usagées (ADBHU). ECLI:EU:C:1985:59. para. 13.

²⁸ 302/86 Commission of the European Communities v Kingdom of Denmark. ECLI:EU:C:1988:421. para. 8.

²⁹ C-213/96 Outokumpu Oy. ECLI:EU:C:1998:155. para. 32.

³⁰ C-176/03 Commission of the European Communities v Council of the European Union. ECLI:EU:C:2005:542. para. 41.

³¹ C-208/09 Ilonka Sayn-Wittgenstein v Landeshauptmann von Wien. ECLI:EU:C:2010:806. para. 89.

Volker und Markus Schecke case.³² The Court also declared its opinion regarding the actual right of justice of legal personnel in the DEB Deutsche Energiehandels- und Beratungsgesellschaft case.³³ In the verdict of an urgent preliminary ruling procedure, the Court was dealing with the rights of children in the Aguirre Zarraga case.³⁴ Since the Charter of Fundamental Rights has been raised to the level of the Treaties, both the number of interpretations of the Charter by national courts, both the Court's verdicts regarding fundamental rights have massively bounced upwards. The most commonly interpreted laws by the Court were the following: the right of a legal remedy, the principle of legal certainty, the right of having a decent and impartial trial, the right of having a respected family and private life, several questions regarding data privacy, the banning of discrimination and the principle of equality, the right of human dignity, the right of asylum, the banning of cruel or inhuman treatment of people, the cooperation between criminal and civil right cases – including the rights of children and the rights regarding the warranty of a criminal procedure. In one of the newest cases, the cooperation of the European Stability Mechanism (ESM system)³⁵ and the Charter's Article 47 took a stand regarding the efficiency of judicial protection. It remembered us that Member States – as the will of the Charter's Article 51 Paragraph (1) – are the subjects of the Charter's command if they are executing the law of the Union. Paragraph (2) of the same Article declares, though, that the Charter does not extend the using area of the law of the Union beyond the boundaries of the Union. Furthermore, it doesn't create new authorities and may not change the already existing authorities set up by the Treaties.

Since the member states do not execute the law of the Union when they are creating a stabilization mechanism like the ESM because during the creation, the TEU does not appoint a separate sphere of authority onto the Union, henceforth something like the signing of the ESM-Contract, of whose currency is the euro, may not violate the principle of effective judicial protection and neither may its ratification³⁶ do so. In the C-92/12 PPU Health Service Executive v S. C. and A. C. case,³⁷ which was attended by the Attorney General, alongside with the Detiček case,³⁸ the Court has reached its verdict of taking action regarding temporary parental authority based on the Charter's Article 24. In the previous case, in accordance with the rules of the legal authority, the Court has declared that the case belongs under the authority of the Council's 2201/2003/EC order, which says that the national courts can temporarily place children in educational or therapic institutes in other Member States if it is in the children's best interest, even if it overwrites parental authority. Regarding the use of the Internet, the Court has stated at multiple occasions³⁹

³² C-92/09 Volker und Markus Schecke GbR (C-92/09) and Hartmut Eifert (C-93/09) v Land Hessen. ECLI:EU:C:2010:662.

³³ C-279/09 DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland. ECLI:EU:C:2010:811. 31–42. para. 59.

³⁴ C-491/10 PPU. Joseba Andoni Aguirre Zarraga v Simone Pelz. ECLI:EU:C:2010:828. 42. para. 59–75.

³⁵ The European Stability Mechanism is the crisis resolution mechanism for countries of the euro area.

³⁶ C-370/12 Thomas Pringle v Government of Ireland, Ireland and The Attorney General. ECLI:EU:C:2012:756. para. 80–181.

³⁷ C-92/12 PPU Health Service Executive v S.C. and A.C. ECLI:EU:C:2012:255

³⁸ C-403/09 Jasna Detiček v Maurizio Sgueglia. ECLI:EU:C:2009:810.

³⁹ The verdict made in the case C-70/10 Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM). ECLI:EU:C:2011:771 and C-360/10 Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v Netlog NV ECLI:EU:C:2012:85.

that the creation of a filtering system for tracking the online data stored on social networks would harm their right of free enterprise, which was mentioned in the Charter's Article 16. In the cases of *Volker v Markus Schecke, Eifert*,⁴⁰ the Court has interpreted the Charter's Article 52's Paragraph (1), regarding legal restrictions. They pointed out that the validity of the involved regulation must be decided while taking the Charter into consideration. The right for defense of personal data, considering the Charter's Article 8, is not an absolute right, but we have to take its usefulness in society into the equation⁴¹. Paragraph (1) of Article 52 of the Charter gives courts the ability to limit rights as the ones mentioned in Article 7 and 8, in case they are serving the very best interest of the Union and its citizens, keeping the integrity of the involved rights whole and complete. The right of personal life involves the right of protection of private data – which is acknowledged by the Charter's Article 7 and 8 – in such a way that all of the identified or identifiable natural person's informations are under protection⁴². However, this right can be restricted reasonably.

In the cases of *N. S.* and *M. E.*,⁴³ the Court was inspecting the execution of fundamental rights and Union law⁴⁴ regarding the right of asylum. With regard to the common European refugee policy, concerning the prohibition of torture and inhuman or degrading treatment, it inspected the concept of a "secure country" set up by the regulation 343/2003/EC, the question of the conveyance of refugees to a responsible Member State and the rebuttable presumption of the responsible Member State's respect over fundamental rights. The interesting thing of this case is that this question has been examined again by the European Court of Human Rights⁴⁵ due to a complaint and both have concurred that the Charter of Fundamental Rights must be respected when it comes to deciding about refugees. Both the Charter's Article 21 and the TEU's Article 19 talk about non-discrimination and the requirement of fair and equal treatment. This has been inspected by the Court in the *Test-Achats* case,⁴⁶ whether they were upheld in regards of the fees of insurance based on gender. In the *Wardyn* case,⁴⁷ a unique aspect of name-bearing came up; the Court was wondering, whether the enforcement of the rewrite of a person's surname as their country of origin's does it, actually violates the Charter or not. In the relation between the Charter and the Union citizenship, there was a real milestone, namely the *Rottman* case,⁴⁸ which was based on the question whether the loss of the citizenship of the country of origin results in the direct loss of Union citizenship, as well.

⁴⁰ C-92/09 *Volker und Markus Schecke GbR (C-92/09) and Hartmut Eifert (C-93/09) v Land Hessen*. ECLI:EU:C:2010:662. para. 46–52.

⁴¹ See: case C-112/00 *Eugen Schmidberger, Internationale Transporte und Planzüge v Republik Österreich*. ECLI:EU:C:2003:333. para. 80.

⁴² See especially: the verdict made at ECoHR at February 16th 2000 in the case of *Amann v Switzerland [Storage of Judgements and Calls 2000-II]* para. 65., and the case at ECoHR at May 4th 2000: *Rotaru v Romania [Storage of Judgements and Calls 2000-V]* para. 43.

⁴³ C-411/10. *N. S. (C-411/10) v Secretary of State for the Home Department and M. E. and Others (C-493/10) v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*. ECLI:EU:C:2011:865.

⁴⁴ The Dublin II. regulation.

⁴⁵ *M.S.S. v Belgium and Greece (App. 30696/09., judgement 2011.01.21.)*.

⁴⁶ C-236/09 *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres*. ECLI:EU:C:2011:100.

⁴⁷ C-391/09 *Malgožata Runevič-Vardyn and Łukasz Paweł Wardyn v Vilniaus miesto savivaldybės administracija and Others*. ECLI:EU:C:2011:291.

⁴⁸ C-135/08 *Janko Rottman v Freistaat Bayern*. ECLI:EU:C:2010:104.

In the Brüstle case,⁴⁹ the copyright of biotechnology, the right of dignity came up in front of the Court, regarding the hypothetical selling of a human embryo.

The European Union is a kind of integration that is based on shared values. The chosen values are obvious: unshakable, constitutional and institutional principles such as democracy, the rule of law, the division of powers, loyalty, subsidiarity. These principles manifest themselves in the relation between the Union and the individual and the true importance of fundamental rights unveil when we consider this⁵⁰. The European Union's controlling, fundamental and unique⁵¹ values all share something, and that is the question of fundamental rights. With the acceptance of the Treaty of Lisbon⁵², another era has come in terms of the fundamental rights, the number of protected rights has increased; the principles of human dignity and equality are now included, which results in the growth of legal protection tasks of the European Union. The growth of case law also inclines that the Court must face several problems regarding fundamental rights, and these are only a forecast of the upcoming challenges in the future.⁵³

GOMBOS KATALIN

AZ ALAPJOGOK MEGJELENÉSE AZ EURÓPAI BÍRÓSÁG GYAKORLATÁBAN

(Összefoglaló)

Az alapjogok védelme szempontjából óriási jelentősége van a Bíróság esetjogának is, hiszen az Európai Bíróság apró lépésekkel előrehaladva, döntésről döntésre kristályosította ki az alapjogok védelmének rendszerét. Az Európai Bíróság ítéleteiből nem csupán a jogvédelem erősségének szintjére vonatkozó elveket olvashatunk ki, hanem az egyes konkrét alapjogok tartalmára vonatkozóan is találunk útmutatót. Az Alapjogi Charta alapszerződési rangra emelkedése óta érezhetően megnőtt mind a nemzeti bíróságok Alapjogi Charta értelmezésével kapcsolatos előterjesztéseinek száma, mind pedig a Bíróság alapjogvédelemmel összefüggő határozatainak száma. Az Európai Unió vezérlő értékei, alapértékei és egyedi értékei közös nevezőjén az alapjogok kérdése áll. A Lisszaboni Szerződés elfogadásával pedig újabb távlat nyílt az alapjogok kérdése előtt, bővült az értékklauzula, ami egyértelműen az uniós jogvédelmi feladatok szaporodását eredményezi. Az egyre terebélyesebbé váló esetjogból is látszik, hogy számtalan alapjogi problémával kell a Bíróságnak szembesülnie, s a jövő új kihívásai e problémák sokasodását vetítik előre.

⁴⁹ In the case C-34/10 Oliver Brüstle v Greenpeace eV ECLI:EU:C:2011:669.

⁵⁰ SCHÜTZ, HANS-JOACHIM - BRUHA, THOMAS - KÖNIG, DORIS: *Casebook Europarecht*. C. H. Beck, München, 2004, p. 453.

⁵¹ The three-sided distinction of value by: CALLIES, CHRISTIAN.: *Europa als Wertegemeinschaft – Integration und Identität durch europäisches Verfassungsrecht?* In: *Juristen Zeitung* 2004/ 1040.

⁵² See more on the topic in: CSÖNDES, MÓNKA.-KECSKÉS, LÁSZLÓ: *Aláírták a Lisszaboni Szerződést*. [The Treaty of Lisbon was signed.] In: *Európai Jog* 2008/1, pp. 3–14.

⁵³ See: Opinion of the Court (Full Court) of 18 December 2014. ECLI:EU:C:2014:2454.