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## **THE ROLE OF CJEU CASE LAW IN SHAPING THE EU HUMAN RIGHTS PROTECTION MECHANISM**

Human Rights protection and respect are main components of the EU's founding aims and guiding principles. Although the Maastricht Treaty and the Amsterdam Treaty only included broad references to Human Rights and Democracy, neither Treaty provided an explicit list of Human Rights. The Lisbon Treaty as the beginning of a new age for the European Union's governance of Human Rights and Democracy represents a major breakthrough in terms of Human Rights protection from a legal perspective [1]. The establishment of new "mechanisms" of Human rights protection which are new and unique to the European Union through the provisions in the Lisbon Treaty. New mechanisms for Human Rights protection include several different types of institutions set forth in binding Treaties and a description of the scope of each of these institutions and a list of member states' obligations. It is also important to note, the decisions of the Court of Justice of the European Union (CJEU), also known as case law, have been essential in creating robust and efficient mechanisms for Human Rights protection. The Court has recognized the existence of a number of Fundamental Rights as General

Principles of EU Law and has interpreted those Fundamental Rights in a manner that will make them more effective in protecting the fundamental Freedoms of all Member Nations.

Contemporary international relations concerning human rights protection have attracted the attention of numerous domestic and international researchers. Their studies explore different dimensions of human rights enforcement mechanisms, including the activities of international institutions, EU bodies, and specific structural elements of these systems, as noted in the works of foreign and national scholars such as Y. Nakanishi, J. Wouters, L. Beke, N. Hachez, A.L. Chane, K. Raube, B. Tubić, O. Melnyk, M. Hryb, etc. Thus, Y. Nakanishi compares coherence between EU's internal human rights protection mechanism and external relations with the similar institutions outside [2]. B. Tubić in his work [3] describes the current status of human rights in the European Union legal system. Ukrainian scholar O. Hryb analyzed system of general principles of human rights protection and features of their implementation in Ukrainian law.

The purpose of this study is to reveal the role of the case law of the Court of Justice of the EU in shaping the mechanism for the protection of human rights.

General frameworks of forming of human rights protection mechanism were established by founding treaties. Thus, The Maastricht Treaty affirms the set of foundational values which consists from following: The Union is built upon respect for the dignity of all mankind, a commitment to freedom, democracy and equality, adherence to the rule of law and human rights, particularly those of individuals belonging to minorities. The Treaty on the Functioning of the European Union provides a more detailed framework for these principles. The TFEU prohibits any form of discrimination (see e.g., Article 18 of the TFEU) based on an

individual's nationality; the TFEU allows the Union to establish legislation against discrimination (see Article 19 of the TFEU). Additionally, the TFEU establishes avenues for judicial recourse by means of individual action in relation to the enforcement of the rights contained within the TFEU. Moreover, the TEU defines the requirement that Member States "shall provide effective remedies to ensure the full legal protection of rights within the framework of the law established by Union law" (Article 19(1) TEU), thereby reaffirming the notion that EU institutions and national governmental bodies are both legally responsible for the enforcement of rights through judicial protection mechanisms. Lastly, the specific contents of the EU Charter of Fundamental Rights provide comprehensive measures and protections for rights within the EU and form part of the primary law of the EU by virtue of Article 6(1) TEU. The Charter identifies rights and principles comprehensively from traditional civil liberties to social rights and data protection and is enforceable by both the EU and Member States "in the implementation of Union law" (Article 51(1) of the Charter). It has provisions to provide coherence with other human rights and provides an example in respect of Article 52(3), which states that rights that fall within the scope of both the Charter and the European Convention on Human Rights (ECHR) must share "the same meaning and scope" unless the EU provides for greater human rights protection than specified within the ECHR. In addition, Article 53 of the Charter expands upon the notion that the interpretation of the Charter cannot limit or lessen human rights protection from other relevant instruments (such as EU law, ECHR, or national constitutions).

Although the Charter was ratified and enacted after its passing, up until that point, the CJEU had already accumulated a vast amount of case law concerning human rights and their place

within the European Union's (EU) overall legal framework. In 1969, in the case of *Stauder*, the CJEU ruled that "fundamental human rights have been incorporated into the general principles of Community Law" and also are protected by the CJEU itself. This was in light of fears at the time about how the concept of EU law being above all other laws may allow for EU actions to take precedence over national constitutional rights. In 1970, the CJEU declared in the case of *Internationale Handelsgesellschaft* that respect for overall fundamental rights is a precondition for determining the legality of any EU act(s), as these rights stem from the common constitutional traditions held amongst all EU Member States. The CJEU also stated in *Nold* (1974) that the provisions of any international treaties or agreements concerning human rights that the EU Member States are party to; primarily the European Convention on Human Rights (ECHR), also would aid with establishing EU fundamental rights standards. The CJEU, by its innovative application of the law, has "constitutionalized" human rights in the EU due to the absence of a formalised written Bill of Rights when it first began.

Now, with a Charter that is legally binding, the CJEU can now actively review EU legislation and any implementing actions taken by a member state against the Charter and can ensure compliance with Fundamental Rights. As a result, The CJEU serves an important function of protecting fundamental rights through several means:

***Judicial review of all EU legislation.*** The CJEU has the authority to declare any measure adopted at the European level (regulations, directives, etc.) illegal for violating an individual's rights as defined by the EU Charter of Fundamental Rights. Since the Charter's entry into force, the Court has issued many landmark decisions declaring invalid European legislation on legal grounds. In

October 2014 in *Digital Rights Ireland*, for instance, the CJEU struck down the Data Retention Directive on the basis that it disproportionately infringed upon both individuals' rights to privacy and data protection under Articles 7 and 8 of the Charter. In 2011, the Court declared the exception in an insurance directive incompatible with the Charter's anti-discrimination principles (the principle of gender equality). More significantly, even before the Charter came into force, the Court in its *Kadi* judgment (2008) stated that the EU must comply with all fundamental rights when adopting and applying measures implementing U.N. sanctions. The CJEU held that EU regulations must respect fundamental rights. Consequently, through these cases and others, the CJEU makes sure that all EU institutions are held accountable for their actions and adhere to fundamental rights.

***Enforcing Rights in Member State Action:*** Through CJEU jurisprudence, it is emphasized that when a national authority acts “in the scope” of EU law, it must meet the fundamental rights standards established by EU institutions as specified within Article 51(1) of the Charter of Fundamental Rights. The CJEU outlined this principle in cases such as *Wachauf* (1989), which required that Member States respect fundamental rights when giving effect to an EU agriculture policy; likewise, in *ERT* (1991), the CJEU determined that Greece was required to attain EU fundamental rights before limiting TV broadcasts due to a derogation from the EU free movement rules. The Court further clarified that this principle applied to all instances where a national authority “implements” an obligation or is “within” EU law by recognizing it last applied in *Åkerberg Fransson* (2013) regarding penalties for non-compliance with EU tax obligations. The Court of Justice of the European Union (CJEU) is the final authority for ensuring that the implementation of European Union (EU) law by Member States is consistent with

Fundamental Rights, usually by means of the Preliminary Ruling Procedure. If CJEU finds that a piece of National Legislation violates EU rights, then that legislation must either be amended or disapplied.

***Articulation of Rights Standards:*** The court uses its judgment to define the content of rights and limits under which these rights can be limited. While the rights in the Charter are not absolute, Article 52 of the Charter gives the courts the power to limit rights based on specific conditions: they must be lawful, necessary and proportionate to the purpose sought after while respecting the essence of the rights being limited. The Court has developed the doctrine of proportionality as precedent to demonstrate how all restrictions against rights should advance legitimate purposes. *Schmidberger v. Austria* (2003) is an example where the court weighed the importance of the free movement of goods against the demonstrators' right of expression and assembly. The court decided it was proportional to allow Austria to allow a protest that interfered with trade. In *Omega v. Germany* (2004), the Court upheld Germany's prohibition on a "laser-tag" game, reasoning it violated a fundamental principle of human dignity. By doing so, the Court was able to integrate human rights into the interpretation of all aspects of EU law, including EU competition law, data protection, immigration law, and criminal law.

This is an incomplete list of how European Union law's (EU) architecture of rights has developed incrementally through important court decisions from basic recognition of rights as general principles through the establishment of ties between EU law and common human rights traditions (early 1970s); through the clarification that Member States continue to be responsible for protecting rights when they are acting under EU the auspices (1980s -1990s ); through an assertion that the EU will defend the right to independence despite

external pressures (2000s -case Kadi); and an absolute defense of privacy and dignity in new contexts (2010s -data cases); and finally a balance between a balance between unity /diversity (Melloni). Each one of these decisions not only provided a remedy for specific instances of injustice but created precedent for future actions of both institutions and States. For example, following Digital Rights Ireland, there were more careful drafts of directives regarding the retention of data, upon Schrems, international partners know they must respect the EU data rights; upon NS and LM, the trust between Member States in respect of mutual cooperation within the area of Freedom Security and Justice, is tempered by a need for a "safety valve" for the protection of rights.

In conclusion, the European Union (EU) has put into place a comprehensive, multilayered human rights protection methodology. Through its two main sources of law (Treaties and the Charter), the EU has established binding obligations to protect fundamental human rights, and provides means to enforce those obligations. The Court of Justice of the European Union (CJEU) plays a key role in interpreting these treaties and the charter, establishing the extent to which EU institutions, as well as member states when exercising their responsibilities under EU law, must adhere to those standards.

### **References:**

1. J. Wouters, L. Beke, N. Hachez, A.L. Chane, K. Raube Enhancing cooperation between the European parliament and EU national parliaments on EU human rights policy, Publications Office, 2014, <https://data.europa.eu/doi/10.2861/52456>
2. Nakanishi, Y. (2018). Mechanisms to Protect Human Rights in the EU's External Relations. In: Nakanishi, Y. (eds) Contemporary Issues in Human Rights Law. Springer, Singapore. [https://doi.org/10.1007/978-981-10-6129-5\\_1](https://doi.org/10.1007/978-981-10-6129-5_1)

3. Tubić, B. (2024). Human Rights Protection in the European Union. Central European Journal of Comparative Law, 5(2), 311–326. <https://doi.org/10.47078/2024.2.311-326>

4. O. Melnyk. Extrajudicial institutions in the sphere of human rights protection in the EU/ International scientific journal «Grail of Science» № 14-15 (May, 2022) [https://rep.btsau.edu.ua/bitstream/BNAU/7674/1/Extrajudicial\\_institut.pdf](https://rep.btsau.edu.ua/bitstream/BNAU/7674/1/Extrajudicial_institut.pdf)

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**МІЖНАРОДНІ ДОГОВОРИ ЯК ДЖЕРЕЛО  
МІЖНАРОДНОГО ПРИВАТНОГО ПРАВА**

Міжнародне приватне право (далі – МПП) регулює приватні правовідносини з іноземним елементом. Воно не має власних автономних джерел: норми МПП містяться в актах національного та міжнародного права [1, с. 128]. Джерелами МПП є внутрішнє законодавство, міжнародні договори, звичаї, судова та арбітражна практика, тощо [2, с. 273]. У цій системі міжнародні договори є одним із найважливіших і навіть