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Human Rights Protection in the European Union

ABSTRACT: *This article aims to describe the current status of human rights in the European Union (EU) legal system. Although it is an important issue in the EU, there was no primary focus although this organization is not primarily focused on it previously. In other words, the European Communities had not paid as much attention to this issue as they should have. However, eventually, as the EU evolved, it established strong mechanisms for the protection of human rights. An important step in this direction was the adoption of the EU Charter on Human Rights, with binding effect on Member States. The rights envisaged in the Charter have been protected in the jurisprudence of the European Court of Justice (ECJ) through procedures for preliminary rulings and actions for annulment. The Lisbon Treaty confirmed the position of this act and human rights in general in the legal system of the EU. The ECJ considers the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights, although they belong to another European system of human rights protection. Together, they provide significant protection to individual human rights. The recent jurisprudence of the ECJ indicates that this protection will remain in the focus of the EU.*

KEYWORDS: human rights, European Union, EU Charter on Human Rights, ECJ, case law,

1. Introduction

Until the end of World War II, human rights remained strictly a national concern. Some international documents regulated human rights in a way, but no systematic international regulation of human rights prevailed covering all categories of human rights. Minority rights were addressed by the Permanent Court of

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International Justice. Further, prohibition of slavery was another aspect that received attention during this period. However, comprehensive international regulation of human rights began only after World War II.

The European Communities and, later, the European Union were created as primarily economic organisations and had nothing much to do with human rights. When the EU integrations began with the creation of the European Coal and Steel Community in 1951, another European organisation had already been founded – the Council of Europe – with human rights protection in Europe as its chief goal, which was confirmed by adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[1] in 1950.

However, in the jurisprudence of the Court of Justice of the European Communities, and especially with the creation of the European Union in 1992, the issue of human rights has appeared on the agenda of the EU. This article presents the initial human rights cases that appeared before the European Court of Justice, followed by several important cases concerning human rights that were brought before this Court. Another aspect that will be addressed here is the non-judicial means of protection of human rights.

2. Development of human rights protection in the European Union

According to the positive legal norms, the EU is founded on values of respect for human dignity, freedom, democracy, equality, the rule of law,[2] and respect for human rights. This is stated in art. 2 of the Treaty on the EU.[3] However, human rights were not the focus on the agenda of the European Economic Community (EEC), and the Treaty on establishing this Community did not contain provisions that could be considered a bill of rights. Nevertheless, some specific individual rights such as freedom of movement and gender equality with respect to equal pay for male and female workers were protected by this Treaty.[4]

However, in the cases that were brought before the Court of Justice of the European Communities, the EEC was given the power to address issues regarding fundamental rights. In its jurisprudence, the Court confirmed its own competence in ensuring respect for fundamental rights as general principles of law in the case of *Internationale Handelsgesellschaft*.[5]

1 European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11 and 14, 4 November 1950, ETS 5.
2 Coli, 2018, p. 275.
3 Consolidated versions of the Treaty on European Union and The Treaty on the Functioning of the European Union, Official Journal of the European Union, vol. 51, 2008/C 115/01, art. 6(2).
4 Defeis, 2007, p. 1106.
5 Case 11/70 Internationale Handelsgesellschaft, Judgment of 17 December 1970, para 4.

The Court, in its jurisprudence, stated that it was bound to draw inspiration from the constitutional traditions common to Member States. It referred to international treaties, of which Member States are signatories, as a source of guidelines for the protection of human rights.[6]

Over time, changes were introduced in the Community law to human rights in its legal instruments. In the preamble to the Maastricht Treaty, it was declared that the EU shall respect human rights as general principles of Community law because they are guaranteed by the ECHR and they result from the constitutional traditions of Member States. In this way, the jurisprudence of the ECJ was explicitly accepted.[7]

The terms 'fundamental rights' and 'human rights' are used in the founding Treaties. The former is used in the context of protection of fundamental rights within the EU and the latter in the external relations of the EU with international organisations and non-Member States.

The EU institutions and bodies are expected to act in accordance with the EU fundamental rights in performing their activities. Acts adopted by the EU institutions must comply with the requirements of fundamental rights protection. Further, EU Member States must respect EU fundamental rights and promote their application when they are acting within the scope of EU law.

Any act contrary to the fundamental rights can be challenged for annulment or declared invalid by a preliminary ruling of the ECJ. Thus, human rights are effectively protected in the European Union, because any act of the EU violating certain human rights or freedoms can be declared null and void, or it can be submitted to indirect control of legality.

■ *2.1. The EU Charter on Human Rights and fundamental freedoms*

The EU Charter on Human Rights and Fundamental Freedoms[8] was adopted in Nice in 2000. It consists of 54 articles organised into seven titles. This international convention created possibilities for a new regime of human rights in the EU.[9] It included more rights and freedoms than the ECHR, because social and economic rights were also included in the text.[10]

The Treaty of Lisbon provides that this EU Charter becomes a binding legal document, with the same legal value as the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

6 Case 4-73 *J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities*, Judgment of the Court of 14 May 1974, para. 13.
7 Shelton, 2003.
8 Charter on Human Rights and Fundamental Freedoms, Official Journal of the European Union 2012/C 326/02.
9 Landau, 2008, p. 561.
10 Pillay, 2021, p. 6.

Although human rights are prescribed in numerous conventions in the framework of the United Nations, and especially in the European Convention on Human Rights and the European Social Charter of the Council of Europe, the Charter ensures a legal certainty regarding human rights in the EU, affording greater visibility and clarity.

3. Relations between the two European courts

The Court has, in its jurisprudence, emphasised that the ECHR is particularly relevant for human rights protection in the EU. This is confirmed in the Treaty of Lisbon, namely, in the current version of the TEU, where it is stated that fundamental rights, as guaranteed by the ECHR and as derived from the constitutional traditions common to Member States, shall constitute the general principles of EU law.[11] However, the possibility of the EU joining the ECHR is presently remote, based on Opinion 2/13, from 2014, in which the ECJ ruled that the draft accession agreement was incompatible with the EU legal order.[12] Nevertheless, this position could change in the future, although the EU has not yet acceded to any of the international human rights treaties.[13]

The relation between the ECJ and the European Court of Human Rights (ECtHR) has been debated in the legal doctrine.[14] In its jurisprudence, the ECtHR cited the EU Charter. For example, in the case of *Scoppola v. Italy* (No. 2), the Court referred inter alia to the explicit provision in art. 49(1) of the EU Charter, which relates to the principles of legality and proportionality of criminal offences and penalties.[15]

There is mutual respect and mutual trust between the two European courts. However, this does not imply absolute trust, and in cases of grave violations of fundamental rights in a Member State, the other can refuse to transfer a person to it. There are several areas of EU law, such as asylum, recognition, and enforcement of civil judgments and the European arrest warrant, where such problems may arise. An example of this is the case of *Aranyosi and Căldăraru*,[16] where the requests for a preliminary ruling concerned the interpretation of arts. 1(3), 5, and 6(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States as amended by Council Framework Decision 2009/299/JHA of 26 February 2009. The requests

11 Consolidated versions of the Treaty on European Union, Official Journal of the European Union, vol. 51, 2008/C 115/01, art. 6(3).

12 Case Opinion 2/13, Opinion of the Court of 18 December 2014. See Gragl, 2013.

13 Ahmed and Jesus Butler, 2006, p. 801.

14 Kuhnert, 2006; Phelps, 2006; De Schutter, 2008; Cherubini, 2015.

15 Application No. 10249/03 Case of *Scoppola v. Italy* (No. 2), Judgment of 17 September 2009.

16 Joined Cases C-404/15 and C-659/15 PPU *Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen*, Judgment of the Court (Grand Chamber) of 5 April 2016.

were made in the context of the execution, in Germany, of two European arrest warrants issued for Mr Aranyosi on 4 November and 31 December 2014, respectively, by the examining magistrate at the District Court of Miskolc, Hungary, and of a European arrest warrant issued for Mr Căldăraru on 29 October 2015 by the Court of first instance of Fagaras, Romania.

The Court held that the mentioned articles of Council Framework Decision 2002/584/JHA, as amended by Council Framework Decision 2009/299/JHA, must be interpreted to mean that, where reliable evidence is found with respect to deficiencies in detention conditions in the issuing Member State, which may be systemic, or which may affect certain groups of people, the executing judicial authority must determine, specifically and precisely, whether substantial grounds exist to believe that the individual named in the European arrest warrant will be exposed, owing to the conditions of detention in the issuing Member State, to any real risk of inhuman or degrading treatment, within the meaning of art. 4 of the Charter in the event of his surrender to that Member State. To this end, the executing judicial authority must ask for supplementary information to be provided by the issuing judicial authority, which, after seeking, if necessary, the assistance of the central authority or one of the central authorities of the issuing Member State, under art. 7 of the Framework Decision, must send that information within the time limit specified in the request. The executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be ended.[17]

A similar situation happened in Case C-216/18 *PPU*,[18] wherein request for a preliminary ruling concerned interpretation of art. 1(3) of the same Council Framework Decision 2002/584/JHA. The request was made in connection with the execution, in Ireland, of European arrest warrants issued by Polish courts against LM, the person concerned. The Court held that art. 1(3) of the Framework Decision 2002/584/JHA must be interpreted to mean that, where the executing judicial authority has material indicating a real risk of breach of the fundamental right to a fair trial guaranteed by para. 2, art. 47 of the Charter of Fundamental Rights of the European Union, on account of systemic or generalised deficiencies of the issuing Member State's judiciary, then the executing judicial authority must determine, whether, considering his personal situation, as well as the nature of the offence for which he is being prosecuted and the factual context that forms the basis of the European arrest warrant, and in the light of the information provided by the

17 Joined Cases C-404/15 and C-659/15 PPU *Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen*, Judgment of the Court (Grand Chamber) of 5 April 2016. para 105.

18 Case C-216/18 *PPU LM,* Judgment of the Court (Grand Chamber) of 25 July 2018.

issuing Member State pursuant to art. 15(2) of Framework Decision 2002/584, as amended, substantial grounds exist for believing that the person will run such a risk if he is surrendered to that State.[19]

4. ECJ jurisprudence in human rights cases

In its jurisprudence, the ECJ has discussed issues related to different human rights and freedoms, such as non-discrimination, freedom of expression, and, in the recent past, it has dealt with some new controversies over human rights in the EU, such as the 'right to be forgotten'.

One of the cases regarding human rights was that of *Dansk Industri*.[20] The proceedings were between Dansk Industri on behalf of Ajos A/S and the legal heirs of Mr Rasmussen, concerning Ajos's refusal to pay Mr Rasmussen a severance allowance. The request for a preliminary ruling was regarding the interpretation of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. Further, the request concerned the principle prohibiting discrimination on grounds of age and the principles of legal certainty and protection of legitimate expectations.

The Court decided that the general principle prohibiting discrimination on grounds of age must be interpreted as precluding national legislation. EU law is to be interpreted to mean that a national court adjudicating a dispute between private persons falling within the scope of Directive 2000/78 must interpret those provisions in such a way that they may be applied in a manner that is consistent with the directive. In case such an interpretation is not possible, provisions would disapply, where necessary, any provision of national law that is contrary to the general principle prohibiting discrimination on grounds of age. Neither the principles of legal certainty nor the protection of legitimate expectations can alter that obligation.[21]

Another case referred to was between a Mrs Chatzi and her employer, the Ipourgos Ikonomikon (Minister for Finance), concerning a decision by the Head of State Tax Office I, Thessaloniki (Greece), refusing her additional parental leave after the birth of her twins.[22] The Greek court asked the Court of Justice to clarify the meaning of art. 2(2) of the Framework Agreement on Parental Leave (set out in Directive 96/34/EC) in the light of art. 24 of the Charter (the rights of the child). The referring court doubted the compatibility of the national legislation implementing

19 Ibid., para 80.

20 Case C-441/14 *Dansk Industri (DI), acting on behalf of Ajos A/S v Estate of Karsten Eigil Rasmussen*, Judgment of the Court (Grand Chamber) of 19 April 2016.

21 Case C-441/14 *Dansk Industri (DI), acting on behalf of Ajos A/S v Estate of Karsten Eigil Rasmussen*, Judgment of the Court (Grand Chamber) of 19 April 2016, para 44.

22 Case C-149/10, *Zoi Chatzi v Ipourgos Ikonomikon*, Judgment of the Court of 16 September 2010.

the Agreement with the Charter, insofar as it granted mothers of twins a single period of parental leave. The Court of Justice held that the national measure was not in conflict with art. 24 of the Charter. However, it stated that, to ensure respect for the principle of equality before the law, granted by art. 20 of the Charter, the Member States must take the necessary measures to consider the specific situation of parents of twins. Accordingly, the Court of Justice answered the question raised by the Greek court as follows:

> The Framework [Agreement], read in the light of the principle of equal treatment ... obliges the national legislature to establish a parental leave regime, which, according to the situation in the Member State concerned, ensures that parents of twins receive treatment that gives due consideration to their particular needs. It is incumbent upon national courts to determine whether the national rules meet that requirement and, if necessary, to interpret the national rules, as far as possible, in conformity with European Union law.[23]

In the *Kücükdeveci case*,[24] reference was made for a preliminary ruling concerning the interpretation of the principle of non-discrimination on grounds of age and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. The reference was made in the proceedings between a Ms Kücükdeveci and her former employer, Swedex GmbH & Co. KG, concerning the calculation of the notice period applicable to her dismissal. The Court held that the European Union law, more particularly the principle of non-discrimination on grounds of age, as expressed in Council Directive 2000/78/EC, must be interpreted as precluding national legislation, such as the issue in the main proceedings, which provides that periods of employment completed by an employee before reaching the age of 25 are not considered in calculating the notice period for dismissal. The national court should ensure compliance with the principle of non-discrimination on grounds of age, as expressed in Directive 2000/78. Any contrary provision of national legislation should be disapplied independently, regardless of whether it makes use of its entitlement, in the cases referred to in the para. 2, art. 267 TFEU, to ask the Court of Justice of the European Union for a preliminary ruling on the interpretation of that principle.[25]

23 Ibid., para 75.

24 Case C-555/07 *Seda Kücükdeveci v Swedex GmbH & Co. KG*, Judgment of the Court (Grand Chamber) of 19 January 2010.

25 Case C-555/07, *Seda Kücükdeveci v Swedex GmbH & Co. KG*, Judgment of the Court (Grand Chamber) of 19 January 2010, para 56.

In Case C-176/12 *Association de médiation sociale* (*AMS*),[26] the request concerned interpretation of art. 27 of the Charter of Fundamental Rights of the European Union and Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community. The request was made in the course of proceedings between, on the one hand, the Association de médiation sociale and, on the other, the Union locale des syndicats CGT, Mr Laboubi, the Union départementale CGT des Bouches-du-Rhône, and the Confédération générale du travail regarding the setting up of bodies representing staff within the AMS by the trade union with jurisdiction for the district.

The Court cited case *Kukuveci* and the principle of non-discrimination on grounds of age at issue in that case, laid down in art. 21(1) of the Charter. This article is sufficient in itself to confer on individuals an individual right that they may invoke as such.[27] However, in the *AMS case*, the Court found that art. 27 of the Charter, by itself or in conjunction with the provisions of Directive 2002/14, must be interpreted to the effect that, where a national provision implementing this directive, such as art. L. 1111-3 of the Labour Code, is incompatible with European Union law, the said article of the Charter cannot be invoked in a dispute between individuals to disapply the national provision.[28] The Court stated that the Charter could have a horizontal direct effect in certain circumstances. It held that the principle of non-discrimination on the grounds of age enshrined in art. 21(1) of the Charter had horizontal direct effect and could be relied on directly to disapply a conflicting national provision, because it is 'sufficient in itself to confer on individuals an individual right which they may invoke as such'.[29]

In the Case C-279/09 *DEB*,[30] reference for a preliminary ruling concerned the interpretation of the principle of effectiveness, as enshrined in the case law of the Court of Justice of the European Union, to ascertain whether that principle requires legal aid to be granted to legal persons The reference was made in the course of proceedings between DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH (DEB) and the Bundesrepublik Deutschland regarding an application for legal aid submitted by that company to the German courts. The Court concluded that the principle of effective judicial protection, as enshrined in art. 47 of the Charter of Fundamental Rights of the European Union, must be interpreted to mean that it is not impossible for legal persons to rely on that principle and that aid granted pursuant to that principle may cover, inter alia, dispensation from

26 Case C-176/12, *Association de médiation sociale v Union locale des syndicats CGT and Others*, Judgment of the Court (Grand Chamber), 15 January 2014.

27 Ibid., para 47.

28 Ibid., para 51.

29 Ibid., para 47.

30 Case C-279/09, *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland*, Judgment of the Court (Second Chamber) of 22 December 2010.

advance payment of the costs of proceedings and/or the assistance of a lawyer. In this connection, the national court needs to ascertain whether (a) the conditions for granting legal aid constitute a limitation on the right of access to the courts, which undermines the very core of that right; (b) they pursue a legitimate aim; and (c) a reasonable relationship of proportionality exists between the means employed and the legitimate aim that it seeks to achieve.[31]

Contrary to the *DEB case*, the Court lacked jurisdiction in the case between Sociedade Agrícola e Imobiliária da Quinta de S. Paio Lda and Instituto da Segurança Social IP.[32] The case involved a request for a preliminary ruling concerning the interpretation of art. 47 of the Charter of Fundamental Rights of the European Union. The *Instituto* had refused to grant legal aid to the *Sociedade*. The Court held that when a legal situation does not fall within the scope of Union law, the Court has no jurisdiction to rule on it, and any Charter provisions relied upon cannot, by themselves, form the basis for such jurisdiction. It stated that there was no evidence in the order for reference to indicate that the objective of the main proceedings concerns the interpretation or application of a rule of Union law other than those set out in the Charter. Given that Directive 2003/8 does not envisage the grant of legal aid to legal persons, the Court held that that it does not apply to the main proceedings. Unlike the case giving rise to the judgement in DEB in which the Court interpreted art. 47 of the Charter in an action for State liability brought under Union law, there is no concrete evidence in the order for reference to indicate that Sociedade Agrícola submitted a request for legal aid for a legal action seeking to protect the rights conferred on it by Union law.[33] The Court concluded that it had no jurisdiction to rule on the questions raised in the request for preliminary ruling.[34] This shows that there were cases in which the Court lacked jurisdiction to decide on the issues of EU law.

There were other cases in which the Court decided human rights issues. In *Case Zambrano*,[35] the reference for a preliminary ruling concerned interpretation of arts. 12 EC, 17 EC, and 18 EC, as well as arts. 21, 24, and 34 of the Charter of Fundamental Rights of the European Union. The reference was made in the context of proceedings between Mr Ruiz Zambrano, a Columbian national, and the National Employment Office concerning refusal by the latter to grant him unemployment benefits under Belgian legislation.

In other words, the referring court asked essentially, whether the provisions of the TFEU on European Union citizenship should be interpreted to mean

31 Ibid., para 63.
32 Case C-258/13 *Sociedade Agrícola e Imobiliária da Quinta de S. Paio Lda v Instituto da Segurança Social IP*. Order of the Court (Second Chamber), 28 November 2013.
33 Ibid., para 23.
34 Ibid., para 24.
35 Case 34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm*), Judgment of the Court (Grand Chamber) of 8 March 2011.

that they confer on a relative in the ascending line who is a third-country national, upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of which they are nationals and in which they reside, and exempt him as well from having to obtain a work permit in that Member State.

It must be assumed that such a refusal would lead to a situation where those children, citizens of the Union, would have to leave the territory of the Union in order to accompany their parents. Likewise, if a work permit were not granted to such a person, he would risk not having sufficient resources to provide for himself and his family, which would also result in the children, citizens of the Union, having to leave the territory of the Union. In such circumstances, those citizens of the Union would, in fact, be unable to exercise the substance of the rights conferred on them by virtue of their status as citizens of the Union.

The Court held that art. 20 TFEU is to be interpreted to mean that it precludes a Member State from refusing a third-country national upon whom his minor children, who are European Union citizens, are dependent, right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third-country national, insofar as such decisions deprive those children of the genuine enjoyment of the substance of the rights attached to their status as European Union citizens.[36]

In another case before the Court,[37] Mrs McCarthy, a national of the United Kingdom and Ireland, was born and has always lived in the United Kingdom and has never claimed that she is or has been a worker, self-employed person, or self-sufficient person. She was in receipt of State benefits.

The reference for a preliminary ruling concerned interpretation of art. 3(1) and art. 16 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The reference was made in the course of proceedings between Mrs McCarthy and the Secretary of State for the Home Department concerning an application for a residence permit made by Mrs McCarthy.

The court held that art. 3(1) of Directive 2004/38 must be interpreted to mean that the said directive is not applicable to a Union citizen who has never exercised his or her right of free movement, who has always resided in a Member State of which he is a national, and who is also a national of another Member State. Further, it stated that art. 21 TFEU is not applicable to a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national, and who is also a national of another Member

36 Ibid., para 46.

37 Case C-434/09, *Shirley McCarthy v Secretary of State for the Home Department*, Judgment of the Court (Third Chamber) of 5 May 2011.

State, provided that the situation of that citizen does not include the application of measures by the Member State that could deprive him of genuine enjoyment of the substance of the rights conferred on him by virtue of his status as a Union citizen or of impeding the exercise of his right of free movement and residence within the territory of the Member State.[38]

In the case of *Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others*,[39] the request for a preliminary ruling concerned the validity of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC. The request made by the High Court concerned proceedings between Digital Rights Ireland Ltd. and the Minister for Communications, Marine and Natural Resources, the Minister for Justice, Equality and Law Reform, the Commissioner of the Garda Síochána, Ireland, and the Attorney General, regarding the legality of national legislative and administrative measures concerning retention of data relating to electronic communications.

The object of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on protection of individuals with regard to the processing of personal data and on the free movement of such data, according to art. 1(1) thereof, is to protect the fundamental rights and freedoms of natural persons, particularly their right to privacy with regard to the processing of personal data. Art. 17(1) states:

> Member States shall provide that the controller must implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, particularly where processing involves transmission of data over a network, and against all other unlawful forms of processing. Such measures should ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected.[40]

The aim of Directive 2002/58/EC on privacy and electronic communications, as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009, according to art. 1(1) thereof, is to harmonise the provisions of the Member States required to ensure an equivalent level of protection

38 Ibid., para 57.

39 Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others*, Judgment of the Court (Grand Chamber), 8 April 2014.

40 Ibid., para 5.

of fundamental rights and freedoms, particularly the right to privacy and to confidentiality, with respect to the processing of personal data in the electronic communication sector and to ensure free movement of such data and of electronic communication equipment and services in the European Union. According to art. 1(2), the provisions of this directive particularise and complement Directive 95/46 for the purposes mentioned in art. 1(1).

The Court held that Directive 2006/24 does not lay down clear and precise rules governing the extent of interference with the fundamental rights enshrined in arts. 7 and 8 of the Charter. It must therefore be held that Directive 2006/24 entails a wide-ranging and particularly serious interference with those fundamental rights in the legal order of the EU, without such an interference being precisely circumscribed by provisions to ensure that it is actually limited to what is strictly necessary. It must be held that Directive 2006/24 does not provide for sufficient safeguards, as required by art. 8 of the Charter, to ensure effective protection of the data retained against the risk of abuse and against any unlawful access and use. In the first place, art. 7 of Directive 2006/24 does not lay down rules that are specific and adapted to (a) the vast quantity of data whose retention is required by that directive, (b) the sensitive nature of that data, and (c) the risk of unlawful access to that data, rules that would serve, in particular, to govern the protection and security of the data in question in a clear and strict manner to ensure their full integrity and confidentiality. Furthermore, a specific obligation on Member States to establish such rules has also not been laid down.[41]

The Court also held that art. 7 of Directive 2006/24, read in conjunction with art. 4(1) of Directive 2002/58 and the second subparagraph of art. 17(1) of Directive 95/46, does not ensure that a particularly high level of protection and security is applied by those providers through technical and organisational measures, but allows those providers to bear economic considerations in mind, such as the costs of implementing security measures, when determining the level of security they must apply. In particular, Directive 2006/24 does not guarantee irreversible destruction of data at the end of the data retention period.[42]

Further, it should be added that the directive does not require the data in question to be retained within the European Union, and therefore, it cannot be assumed that the control, explicitly required by art. 8(3) of the Charter, by an independent authority, to comply with the requirements of protection and security, as referred to in the two previous paragraphs, is fully ensured. Such a control, carried out on the basis of EU law, is an essential component in the protection of individuals with regard to the processing of personal data.[43]

41 Ibid., para 66.
42 Ibid., para 67.
43 Ibid., para 68.

On the basis of the alleged, the Court concluded that by adopting Directive 2006/24, the EU legislature has exceeded the limits imposed by compliance with the principle of proportionality in the light of arts. 7, 8, and 52(1) of the Charter. Therefore, it declared Directive 2006/24 invalid. This is one of the cases in which the Court declared an EU act invalid due to violation of certain human rights principles. These procedures are also efficient in human rights protection besides the references for preliminary rulings.

One of the most important recent human rights cases before the ECJ was the case of *Google Spain*.[44] The request for a preliminary ruling concerned interpretation of arts. 2(b) and (d), arts. 4(1)(a) and (c), art. 12(b) and subparagraph (a) of the first paragraph of art. 14 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals in terms of processing of personal data and on the free movement of such data and of art. 8 of the Charter of Fundamental Rights of the European Union. The request was made in the proceedings between, on the one hand, Google Spain SL and Google Inc. and, on the other, the Spanish Data Protection Agency and Mr Costeja González, concerning a decision by the Agencia Española de Protección de Datos (AEPD) upholding the complaint lodged by Mr Costeja González against the two companies and ordering Google Inc. to adopt the necessary measures to withdraw personal data relating to Mr Costeja González from its index and to prevent access to that data in the future.

The Court held that arts. 2(b) and (d) of Directive 95/46/EC must be interpreted to mean that, first, the activity of a search engine involves finding information published or placed on the Internet by third parties, indexing it automatically, storing it temporarily and, finally, making it available to Internet users according to a particular order of preference, and classified as 'processing of personal data' within the meaning of art. 2(b) when that information contains personal data. Further, the operator of the search engine must be regarded as the 'controller' in that processing, within the meaning of art. 2(d).

Furthermore, the operator of the search engine is obliged to remove from the list of results displayed the links to web pages published by third parties containing information relating to that person following a search made on the basis of that person's name; the same must be done in cases where that name or information is not erased beforehand or simultaneously from the web pages, and even, as the case may be, if its publication in itself on those pages is lawful.

Moreover, it should inter alia be examined whether the data subject has the right that the information in question relating to him personally should, at this point in time, no longer be linked to his name by a list of results displayed following a search made on the basis of his name, without it being necessary to find such

44 Case C-131/12 *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*, Judgment of the Court (Grand Chamber), 13 May 2014.

a right that the inclusion of the information in question in that list causes prejudice to the data subject. As the data subject may, in the light of his fundamental rights under arts. 7 and 8 of the Charter, request that the information in question may no longer be made available to the general public on account of its inclusion in such a list of results, those rights override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that information upon a search relating to the data subject's name. However, this would not be the case if it appeared, for particular reasons, such as the role played by the data subject in public life, that interference with his fundamental rights is justified by the preponderant interest of the general public in having, because of its inclusion in the list of results, access to the information in question.[45]

These examples of case law indicate that the ECJ has had a significant impact on human rights protection in the European Union. Its creative and advanced approach has helped 'EU lawmakers' enact the relevant legal norms in the secondary legislation of the EU. Moreover, the interpretation and protection of human rights from the EU Charter of Fundamental Rights of the European Union are extremely important, giving this act a significant place in the legal system of the EU.

5. Human rights protection by non-judicial means

Individuals can seek protection of fundamental rights through non-judicial means as well. One such method is to file a petition with the European Parliament, as enshrined in art. 44 of the EU Charter[46] and in arts. 20, 24(2), and 227 of the TFEU.[47] EU citizens and residents in the EU can draw the European Parliament's attention to a subject that falls within the competences of the EU and concerns the petitioner directly.

Moreover, they have the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices, or agencies of the Union, with the exception of the ECJ acting in its judicial role.[48] The Ombudsman examines such complaints and reports on them. Further, he or she submits an annual report to the European Parliament on the outcome of the inquiries he or she conducts.

The other means is to raise a complaint to the European Data Protection Supervisor, which was established by Regulation (EC) 45/2001 and designated to be the independent data protection authority supervising how European institutions

45 Ibid., para 100.
46 EU Charter, art. 44.
47 Consolidated version of the TFEU, arts. 20, 24(2), and 227.
48 Consolidated version of the TFEU, arts. 20, 24(3), and 228; EU Charter, art. 43.

process personal data. Anyone who considers that his or her rights have been infringed when an EU institution, body, office, or agency has processed data relating to him or her can lodge a complaint with the European Data Protection Supervisor.[49]

When a fundamental right has been breached by national authority, acting within the scope of EU law, an individual can file a complaint to the European Commission.

Although these non-judicial means can provide human rights protection, the individuals mainly choose procedures before the ECJ owing to the developed jurisprudence and the obligatory effects of its judgements.

6. Conclusion

Human rights protection is a significant aspect of the European Union, especially after the Lisbon Treaty and the new status of the EU Charter on Human Rights. Having strong relations with the European Convention on Human Rights and the European Court of Human Rights, the EU, together with them, creates an important human rights framework in Europe.

The EU legal system has means and mechanisms for obtaining protection in the case of breach of EU fundamental rights. This protection could be provided by different judicial and non-judicial bodies. The judicial protection of fundamental rights under the Charter is provided by the ECJ and by the national courts of the Member States.

If the violation of fundamental rights derives from an EU measure, only the ECJ can annul the act that gave rise to the breach. This can be done through an action for annulment before the courts and also through a reference to the Court for a preliminary ruling submitted by the national court.

In the jurisprudence of the ECJ several interesting issues have arisen, such as the case of Google Spain, in which the Court interpreted Directive 95/46/EC on the protection of individuals in relation to the processing of personal data in the light of the right to respect for private life and the right to protection of personal data. The Court held that it must be interpreted as confirming 'the right to be forgotten', which implies the right of a person to get the operator of a search engine to remove information related to him or her. This case confirmed the creative approach adopted by the ECJ in the issue of human rights protection.

49 Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, *OJ L 8, 12.1.2001, pp. 1–22,* art. 32.

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