

FUNDAMENTAL RIGHTS: THE PRODUCT OF CASE LAW? BEFORE THE TREATY OF LISBON¹

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Abstract

This study aims to examine fundamental rights, with their source, scope and applications, in the process of becoming a part of the European Community legal order. It also investigates the European Court of Justice's (ECJ) contributions to this process. The ECJ, which had considered economic reasons and initially refused to recognise basic rights, has changed its position and has defined respect for fundamental rights as a requirement in the integration process. It has referred to the constitutional traditions of member states in determining the scope of fundamental rights. The ECJ has also applied "the lowest common denominator" method when conflict occurs among the constitutions of member states, and has expanded the scope of fundamental rights in light of cases encountered over time. The conflict between the European Court of Human Rights and the ECJ has prevented the European Union from reaching a consensus on fundamental rights. Thus, some criticism has been directed at the ECJ regarding its role in determining fundamental rights. This article presents such critical assessments in order to implement a more successful, consistent and transparent basic rights structure for the European Commission.

Keywords: *Fundamental rights, human rights, European Court of Justice*

TEMEL HAKLAR: İÇTİHAH HUKUKU ÜRÜNÜ MÜ? LİZBON ANTLAŞMASI ÖNCESİ

Özet

Bu çalışmada temel hakların Avrupa topluluk hukuk düzeninin bir parçası olma sürecinde kaynak, kapsam ve uygulamalardan hareketle irdelenmesi ve Avrupa Adalet Divanı'nın bu sürece katkısının analiz edilmesi amaçlanmıştır. Temel hakları ekonomik perspektiften inceleyerek reddeden, sonraki süreçte ise tutumunu temel haklara saygı duyulması zorunluluğu yönünde değiştiren Avrupa Adalet

¹ It is originally called the Reform Treaty.

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Divanı, temel haklar kapsamını belirlerken üye devlet anayasa geleneklerini referans almıştır. Divan, ilgili Anayasalar arasında ihtilaf vuku bulduğunda “en küçük ortak payda” metoduna başvurmuş, temel hakların kapsamını karşılaşılan vakalar ışığında zamanla genişletmiştir. Avrupa Adalet Divanı ve Avrupa İnsan Hakları mahkemeleri arasındaki ihtilaf temel haklar konusunda Avrupa Birliğinin ortak hareket edememesi sonucunu doğurunca Avrupa Adalet Divanının temel hakların belirleyicisi olma rolüne dönük eleştiriler yükselmeye başlamıştır. Avrupa Adalet Divanına yöneltilen eleştirilerin de yer aldığı bu makalede Avrupa Komisyonu Temel haklarının daha başarılı, uyumlu ve şeffaf uygulanabilmesi için bir dizi öneri sunulmuştur.

Anahtar Sözcükler: *Temel haklar, insan hakları, Avrupa Adalet Divanı*

Introduction

The role of the doctrine of fundamental rights in the European integration process is crucial. The European Court of Justice (ECJ)² has taken a leading role in ensuring the protection of fundamental rights within the European Community (EC) legal order. Over the years, the ECJ has developed a fundamental rights dimension in EC law to guarantee its supremacy over national laws.

The ECJ has made a significant advance by including the protection of fundamental rights within the scope of the general principles of law. Thus, it has ensured such a protection in the absence of any treaty provisions. The ECJ rulings have been based on the principles set out in the European Court of Human Rights (ECHR) and on the common constitutional traditions of member states. This achievement has continued step by step to the present day. However, there have also been considerable criticisms of the ECJ's approach to fundamental rights in European integration.

The main purpose of this paper is to examine the process by which “fundamental rights” came to form part of the EC legal order. First, the evolution of the concept of fundamental rights in terms of its application, content and sources will be analyzed in detail on the basis of the ECJ's case law. Then the important contributions of the ECJ to this process will be critically evaluated.

² After the Treaty of Lisbon, the court's official name was converted to the Court of Justice on the European Union.

1. Development of the Fundamental Rights Protection in the EC

1.1. Excluding Fundamental Rights from the EC

The protection of fundamental rights is a process which has “slowly developed” (Scheuner, 1975:171). As the Treaty establishing the European Economic Community (TEEC) was essentially economic in character, it originally contained no specific clauses on human rights. However, the authors of the TEEC were not totally unaware of the need to protect fundamental rights. There were some related provisions, such as freedom of movement for workers and prohibition of any discrimination on grounds of nationality or sex. Indeed, these articles have served as the basis for very important legislation and case law regarding fundamental rights (Duparc, 1992: 12).

According to Ward, there are two results of the absence of a human rights basis in the TEEC: first, the lack of any definitional guide causes much confusion in the EC regarding the meaning of human rights; second, the evolution of human rights jurisprudence is almost exclusively the work of the ECJ (1996: 142).

In a series of early cases,³ the ECJ refused to recognise fundamental rights. In the first case⁴ in which the question arose, the court rejected the argument that nationals of member states should benefit in EC law from the protection of human rights guaranteed by their national constitutions.

After revising its original position, the ECJ has consistently recognised that fundamental rights form an integral part of the EC legal order. It has also confirmed and developed its approach that the obligation to respect fundamental rights applies both to European Union institutions and to member states in the area of EC law (Kent, 2000: 24).

1.2. Creating a Fundamental Rights Dimension in EC law

The ECJ began to review EC acts first and national acts later, and it has ruled that all EC institutions and national authorities must respect fundamental rights when they are implementing EC law.

1.2.1. Community Measures

Protecting against acts of the EC’s institutions that are contrary to fundamental rights has been one of the ECJ’s greatest achievements. In *Stauder*, the court

³ Case 40/64, Sgarlata [1965] ECR 215; Joined Cases 36-38 and 40/59, Geitling [1960] ECR 423.

⁴ Case 1/58, Stork [1959] ECR 17.

recognised that the protection of fundamental rights was “enshrined in the general principles of Community law”⁵ and was a part of the law which the ECJ had a duty to uphold in order to ensure the supremacy of EC law. This can be interpreted as a “defensive” step (Coppel and O’Neill, 1992: 670).

The recognition of fundamental rights was taken a step further in the *Internationale Handelsgesellschaft*, which marks a distinct progress in the EC’s constitutional development. The ECJ accepted that protection of fundamental rights, while “inspired by the constitutional traditions common to the member states, must be ensured within the framework and structure of the objectives of the EC.”⁶ Furthermore, the ECJ specifically recognised member state constitutional traditions as evidence of the general principles.

The ECJ declared in *Nold* that it would not uphold measures which are incompatible with the fundamental rights recognised and protected by the constitutions of the member states.⁷ Moreover, the ECJ referred for the first time to international human rights treaties. As it spoke about treaties on which member states have “collaborated” or of which they were signatories, this decision gave the ECJ a wide range of guidelines (Hartley, 1998: 138).

The ECJ continued its development of fundamental rights by consulting specific constitutional provisions from different member states. In *Hauer*⁸, the ECJ recognised that the right to property was in accordance with TEEC’s objectives and translated it into EC law as a fundamental right. The ECJ referred expressly to provisions of national law to show that the right of property was subject to limitations in the public interest. This conciliatory approach may have been the result of the defiant reaction of the German Constitutional Court (Tridimas, 1999: 237).

From the terms of the early decisions in the above-mentioned cases, it is clear that the EC institutions are bound to have regard to fundamental human rights and that the powers of the institutions are limited by those rights. Subsequently, fundamental rights have been relied on in numerous cases to challenge the validity of EC legislation and administrative action. For example, in *Baustalgewebe*⁹, the ECJ “for the first time” (Toner, 1999: 1345) held that the Court of First Instance (CFI) had infringed the applicant’s right to a hearing within a reasonable time under Article 6 (1) of the ECHR.

⁵ Case 29/69 [1969] ECR 419, para. 7.

⁶ Case 11/70 [1970] ECR 1125, para. 4.

⁷ Case 4/73 [1974] ECR 491, para. 13.

⁸ Case 44/79 [1979] ECR 3727.

⁹ Case C-185/95P [1998] ECR I-8417.

1.2.2. Member States' Actions

Subsequently, the ECJ expanded its protection of human rights to include member state actions. Thus, the ECJ “has started to add an ‘offensive’ dimension to its fundamental right doctrine” (De Witte, 1999: 870). According to Lang, member states are bound by the EC fundamental rights principles when they implement community acts and take measures derogating from the fundamental freedoms (1991: 30).

1.2.2.1. Implementing EC acts

Since the national authorities act as the agents of the EC institutions in these areas, it is called an “agency” situation (Duvigneau, 1998: 68). The member states must respect the fundamental rights protected by the ECJ when acting in pursuant of powers granted under EC law. *Wachauf*¹⁰ marked the first time the ECJ required member states to conform to general principles of human rights when implementing EC law. This case showed that member states’ obligations should comply with the principles of fundamental rights, and apply when the member states are implementing EC rules, irrespective of the degree of discretion of member states. This principle was repeated in *Bostock*.¹¹

1.2.2.2. Derogating from EC law

The member states must also abide by the fundamental rights protected by the European Court of Human Rights when invoking derogations permitted by EC law. This was made clear in *Rutili*.¹² Moreover, it “appeared to come close to giving direct effect” (Brown and Jacobs, 2000: 360) to the ECHR, by expressly referring to the latter.

Although the ECJ has expanded its scope of human rights protection since *Stauder*, the court has also established limits. In *Cinetheque*, the ECJ ruled that “it had no power to examine the compatibility” with the convention of laws concerning areas which fall “within the jurisdiction of the national legislator”.¹³

Similarly, the ECJ stated in *Demirel*¹⁴ that it had no jurisdiction to examine the compatibility of national law with the ECHR in areas which fell outside the scope of EC law. Thus it refrained from expanding the scope of EC influence into areas not addressed by the treaties. However, in *P v. S*¹⁵ the ECJ took a “far more liberal approach” (Flynn, 1997: 384), and this case marked a new step in the

¹⁰ Case 5/88 [1989] ECR- 2609.

¹¹ Case C-2/92 [1994] ECR I-955.

¹² Case 36/75 [1975] ECR 1219.

¹³ Joined Cases 60 & 61 /84 [1985] ECR 2605, para. 26.

¹⁴ Case 12/86 [1987] ECR 3719.

¹⁵ Case C-13/94 [1996] ECR I - 2143.

process of identifying fundamental human rights. It held that fundamental rights cover the principle of equality and that this non-discrimination principle extends to transsexuals. The ECJ then concluded that the scope of the directive must be read in light of this principle.

In *ERT*,¹⁶ the ECJ expanded the scope of *Wachauf* to include member state action that falls within the scope of EC law. It held that national acts should not take advantage of an express derogation from the fundamental freedoms unless they respected fundamental rights.

The *Grogan*¹⁷ case illustrated that the protection of fundamental rights which conflict with TEEC objectives would be treated as derogations (Phelan, 1992: 681). However, this restriction “must respect fundamental human rights which are part of the Community legal order and in particular the provisions of the ECHR” (Curtin, 1992: 598).

1.3. Sources of Fundamental Rights: Diverging Contents and Standards?

As the TEEC does not provide a catalogue of fundamental rights, this list is “open-ended” (Lang, 1991: 34). The ECJ gradually developed a remarkable body of case law from 1969 onwards, by referring to the constitutional traditions common to the member states and to international treaties for the protection of human rights. In this regard, the ECJ has stated that the ECHR has special significance. There are, however, other international treaties and organizations; for instance, the ECJ in *Defrenne*¹⁸ derived its decision from the European Social Charter of 1961 and the International Labour Organization (ILO) of 1958.

The content of fundamental rights recognised by the ECJ includes freedom of religion,¹⁹ freedom of expression,²⁰ prohibition on discrimination on grounds of nationality,²¹ right of free movement of persons,²² respect for private life and family life (including medical confidentiality),²³ the right to judicial review,²⁴ the principle of non-retroactivity of penal measures,²⁵ and the right against self-incrimination.²⁶

¹⁶ Case C-260/89 [1991] ECR I-2925.

¹⁷ Case C-159/90 [1991] ECR I-4685.

¹⁸ Case 43/75 [1976] ECR 455.

¹⁹ Case 130/75, Prais [1976] ECR 1589.

²⁰ Case 100/88, Oyowe [1989] ECR 4285.

²¹ Case C-274/96, Bickel [1998] ECR I-7637.

²² Case 186/87, Cowan [1989] ECR 195.

²³ Case C- 404/92P X v. Commission [1994] ECR I – 4737.

²⁴ Case C-120/97, Upjohn [1999] ECR I- 223.

²⁵ Case 68/83, Kirk, [1984] ECR 2689.

²⁶ Case 374/87, Orkem [1989] ECR 3283.

The two sources of fundamental rights protection can lead to diverging standards. Indeed, it is unclear which source provides better protection. There are mainly two possibilities for solving this problem, namely, accession to the ECHR and declaration of a European Community Bill of Rights. The accession to the ECHR should be “accompanied by a system of effective legal remedies” (Neussl, 1997: 56). However, Besselink argued that neither of them can be an adequate legal answer to this problem (1998: 630).

1.3.1. Constitutional Traditions

According to the ECJ's cases, the general principles of EC law constitute the principal source of law for fundamental rights in the EC legal order. At the same time, the ECJ pointed out that the source of these general principles was not totally independent of the legal cultures and traditions of the member states.²⁷ Therefore, it referred to the constitutional traditions common to the member states as sources of inspiration for the protection of fundamental rights in the EC. The *Hauer* is a “good example of the ECJ’s comparative constitutional approach” (Craig and Burca, 2002: 325). However, there may be some difficulties where a fundamental right in one member state was not recognised, or was controversial, in another member state.

In *Hoects*,²⁸ the ECJ seemed to have opted for protection at the “lowest common denominator”, as there were major differences between national legal systems with respect to business premises. Furthermore, there are some limits to the “scope of the doctrine”. As seen in the *Grogan* case, the ECJ would not offer any remedy when a rule of the treaties appeared to be inconsistent with fundamental rights recognised in national constitutions (De Witte, 1991: 11). This case shows that some difficulties can arise when a fundamental right enshrined in a member state’s constitution clashes with economic interests (Hanlon, 2000: 62).

It is difficult to say whether the ECJ has clearly accepted either a maximalist or a minimalist approach. Rather, the ECJ is trying to develop a standard of protection inspired by the common constitutional traditions of the member states.

1.3.2. European Court of Human Rights

Although each member state is individually a party to the ECHR, it is not the case with the EU. However, EC law, as interpreted by the ECJ, has embraced the fundamental rights arising under the ECHR. In 1979 the EC formally proposed accession to the ECHR. However, in its *Opinion 2/94*,²⁹ the ECJ ruled that the EU could not accede to the ECHR unless an EU treaty provision enabled it to do so.

²⁷ Case 17/74, *Transocean Marine* [1974] ECR 1063.

²⁸ Cases 46/87 and 227/88 [1989] ECR 2859.

²⁹ [1996] ECR I-1759.

Thus, in this sense, according to Gaja the ECJ “has failed to contribute to the development of the protection of human rights” (1996: 989).

The express reference to the ECHR in treaties and in case law raises the problem of the relationship between the EC legal order and the ECHR system. In *Johnston*³⁰, the ECJ said that the principles on which the ECHR is based must be taken into consideration in EC law. On the other hand, there is “always confusion about the relationship between the EU and the European law dealing with human rights” (Cuthbert, 2000: 102). It is submitted that “as the area of state action which falls within the jurisdiction of the EC expands, the potential for overlapping and contradictory rulings” between the two courts grows (Burca, 1993: 308).

The difficulties are illustrated by many cases. For example, such possible conflict arose in *Hoects* where the ECJ stated that Article 8 of the ECHR was concerned with the development of man’s personal freedom and might not therefore be extended to business premises. At that time, the ECJ pointed out, there was no case law of the European Court of Human Rights (ECtHR) on the subject. Subsequently, however, the ECtHR has ruled otherwise in *Niemitz*.³¹

Likewise, the *Grogan* and *Open Door*³² cases demonstrated the difference in approach taken by the two European courts. As the relevant national legislation did not come within the ambit of EC law, the ECJ held that it had no jurisdiction to assess the compatibility of national legislation with fundamental rights.

1.4. Political Responses to the Process of Fundamental Rights

The other EC institutions and the member states have approved the ECJ’s approach in order to underline the EC’s political commitment to respect for fundamental rights. This development has gradually been given increasing formal recognition by the EC institutions and within the amended treaties.

Throughout the years, other institutions have been important participants in making and implementing the EC’s fundamental rights policy. In 1977, the European Parliament (EP), the European Council and the European Commission issued a Joint Declaration³³ stressing “the prime importance they attached to the protection of fundamental rights” and referring expressly to the ECHR. This declaration is of great political importance, emphasising as it does the ECJ’s derivation of those human rights. They pledged to respect human rights in the exercise of their powers, pursuant to the EC’s aims. Moreover, the EP adopted the

³⁰ Case 222/8 [1986] ECR 1651.

³¹ Series A, No. 251-B, [1992].

³² Series A, No. 246 [1992].

³³ O.J. 1977 C 103/1.

Declaration on Fundamental Rights and Freedoms,³⁴ which was seen as a first step towards an EC “bill of rights” (Clapham, 1990: 344) in 1989.

However, the main responsibility for the protection of fundamental rights rests with the member states. Therefore, approval from the member states for the ECJ’s importation of fundamental rights principles into EC law has come in the form of amendments to the original treaties.

1.4.1. Amended Treaties

In the preamble to the Single European Act (SEA), the member states expressed their determination to work together to promote democracy on the basis of fundamental rights. According to Article 2 of the Treaty on European Union (TEU), one of its objectives is to “strengthen the protection of the rights and interests of the nationals of its Member States”.

The Treaty of Amsterdam (ToA) brought several new provisions relating to human rights and thus reinforced the basis for the EU in this field. It amended Article 6 (1) of the TEU to provide that the EU is founded on the principles of respect for human rights and fundamental freedoms. It repeated much of the language used by the ECJ in its case law relating to the protection of fundamental rights as general principles of EC law. Thus, “the provisions in the treaties have now to be interpreted consistently with the general requirement that fundamental rights have to be respected” (Gaja, 1994: 552). This expanded ECJ jurisdiction to include a review of EC institutions’ actions regarding fundamental rights protections in the EC legal order, whether acting in the context of EC or EU policy making (Peers, 1999: 167).

By the same token, Article 7 of the TEU introduced a political mechanism to prevent violations of these principles. Therefore, “the need to comply with fundamental principles is being taken seriously indeed” (Steiner and Woods, 2000: 114). The Treaty of Nice has added a new part to this article and there is a slightly new procedure for determining whether there is a “clear risk of a serious breach” of fundamental rights.

The EU has included the human rights clause in treaties with third countries. Article 49 of the TEU spells out that accession is only open to states that respect the principles set out in Article 6 (1) and are thus committed to the protection of human rights. In 1993, the Copenhagen European Council formulated that a candidate country must achieve respect for human rights.

In addition, the principle of non-discrimination on grounds of nationality was enshrined in Article 13 of the EC. This article has an impact on fundamental rights

³⁴ OJ.1989, C120/51.

legislation (Flynn, 1999: 1151). However, under Article 68 (1) of the EC, the ECJ's jurisdiction is limited to preliminary rulings upon request of a national court, against whose decisions there is no legal remedy under national law. It has been argued that due to the long wait and delays in judicial procedure, "doubts may be raised as to whether this Article complies with the fundamental right to effective judicial review" (Ward, 2001: 416).

1.4.2. The Charter of Fundamental Rights

The Charter of Fundamental Rights is the latest in a whole raft of the EC's declarations and charters concerning fundamental freedoms. It has brought all the personal, civic, political, economic and social rights together into a single simple text. It stems from the treaties, ECJ case law, the member states' constitutional traditions and the ECHR.

The charter can be seen as a "definitive guidance on issues such as the rights to be protected, the scope of the protection, and the standard of protection". Moreover, it could provide "one basis for the evolving constitutional framework of the EU" (Shaw, 2000: 363).

The convention on the future of the EU is currently studying the question of the charter's legal status, whether to make it legally binding. However, since the ECHR would lead to increase the ECJ's jurisdiction, the majority of member states may be reluctant to agree to a legally binding charter.

2. A Critical Assessment of the ECJ's Contribution to the Emergence of Fundamental Rights

The ECJ is the first institution to stress the need to respect fundamental rights in the EU and "from scratch; it has built up its case law" (Betten and Grief, 1998: 63). Nonetheless, as Tridimas rightly pointed out, the ECJ's "creative jurisprudence has not been without its critics" (1999: 202). The level of protection has been considered insufficient by a number of scholars. It is claimed that the ECJ has left fundamental rights issues "undecided, faced open conflict, or adopted a constructive approach" (Spielmann, 1999: 776). In this context "adopted a constructive approach" may be interpreted as a positive development rather than a reason for criticism as well. Generally, five main criticisms have been voiced. All concerns are to some extent related, and represent "a degree of scepticism about the ECJ's ability to enforce a satisfactory system of human right protection" (Craig and Burga, 2002: 363).

First of all, it has been claimed that the doctrine of fundamental rights has been developed with "cynical motives" (Douglas-Scott, 2002: 437). In fact, in its early cases, the ECJ had held that it had no power in the field of human rights. It is clear that the ECJ did not start the process of human rights spontaneously. One of the

reasons for the introduction of fundamental rights into EC law was some national constitutional courts' opposition to its supremacy. The German Constitutional Court threatened to use the "ultimate weapon simply ruling that an EC measure or ECJ judgment is in breach of national constitutional law" (Peers, 1998: 146). In order to "stave off rebellion" (Steiner and Woods, 2000: 113) of these courts, the ECJ decided that fundamental rights are part of the general principles of law which EC institutions have to respect in their activities. Specifically, "the ECJ's discovery" of fundamental rights "was provoked by a well-founded fear" of some national constitutional courts' attitude. The ECJ was "forced to recognise [that] fundamental rights prevent the Community's laws from being tested for compatibility with national constitutions" (Mancini and D. Keeling, 1994: 187).

Second, there have been some national reactions regarding the weaknesses of the ECJ's case law. Some national courts also contributed to the development of the EC's fundamental rights by their criticisms of the ECJ. For example, the German Constitutional Court held that fundamental rights were insufficiently protected by EC law because EC lacked a catalogue of those rights.³⁵ It also maintained that the German courts should not apply rules of EC law which infringed fundamental rights as guaranteed by the German Constitutional Court, as long as EC law did not itself provide sufficient protection.

Third, Coppel and O'Neill have argued that the ECJ is not really interested in offering effective protection for human rights, but uses its general principles of case law in an instrumental way, namely, to affirm the authority of EC law against the member states. Furthermore, they have asserted that the ECJ does not seem to take fundamental rights as seriously as their weight requires and is using the rhetoric of human rights protection as a cloak for other aims, especially for market integration (Coppel and O'Neill, 1992: 670). Likewise, Hanlon has implied that the ECJ has prioritised market concerns, as exemplified in the Grogan case (Hanlon, 2000: 62). Weiler and Lockhart, on the other hand, have averred that the ECJ is genuinely concerned with protecting human rights (1995).

The fourth question is the lack of visibility of fundamental rights in the EC because of the unwritten state of its general principles of law. The case law was inspired by the ECHR and the long-established constitutional traditions of the member states. However, this means that fundamental rights are granted somewhat indirectly to the citizens and are not immediately visible to them. It is argued that the ECJ's case law can only take effect "after a violation has been committed", and this case law does not provide adequate protection because it is subject to change. So this situation is incompatible with the requirements of legal certainty (Toth, 1997: 495). Furthermore, it is claimed that "the ECJ's scrutiny is not strict enough,

³⁵ Bundesverfassungsgericht, [1974] 2 CMLR 551.

i.e., that it leaves too much to the institutions' discretion" (Bogdandy, 2000:1320) and that the ECJ has attempted to "act as another ECtHR" (Craig and Burca, 2002: 63).

Finally, it is pointed out that the narrow construction of Article 230 (4) of the EC makes it too difficult to obtain adequate legal protection for litigating human rights violations, since "except in really exceptional circumstances, there is no right of action against breaches of fundamental rights committed through general normative acts of Community law." (De Witte, 1999: 877). The ECJ in *Johnston* "cast the entitlement of private parties to an effective judicial remedy as a fundamental right in the Community legal order" (Ward, 2000b: 217). On the other hand, according to Ward (2000b: 244), "the ECJ withdrew from taking a more innovative approach in the *Stichting Greenpeace*³⁶ case." Similarly, AG Jacobs in *UPA*³⁷ and the CFI in *Jégo Quéré*³⁸ have argued that there were some problems regarding individual concern with the fundamental right of access to judicial review. As Article 230 of the EC "is hopelessly outdated and in need of reform," (Neuwahl, 1996: 17). It should be open to "individuals who claim that their fundamental rights have been violated, even with respect to a Community act which is not [a] direct and individual concern to them." (Schermers, 1996: 17).

Conclusion

The ECJ's long-standing case law has been the important driving force for the development of the EU's fundamental rights framework. The issue of EC fundamental rights is in a dynamic phase. The ECJ's case law on fundamental rights is, in fact, still developing. The jurisprudence of the ECJ in the field of human rights is now well established, and it will continue to expand their protection.

The ECJ and other institutions are making efforts to make the EC fundamental rights more coherent, result-oriented, transparent and successful. The ECJ has undoubtedly made significant contributions to bolster fundamental rights in the EC. Notwithstanding the views of some critics, it will be seen that overall, case law had the effect of expanding the EC's scope of competence in this field. The evolution of fundamental rights within the EC legal order "has reached a point where no one can continue to deny its role in the promotion and protection of such rights." (McCanna, 1999: 74)

Although there are still "relatively few references" to fundamental rights in EC law, even after treaty revisions of the SEA, TEU, ToA and Nice (Douglas – Scott,

³⁶ Case C-321/95 P [1998] ECR I-1651.

³⁷ Case C-50/00, UPA, [2002] ECR I-6677, the Opinion of AG, para. 39.

³⁸ Case T-177/01, Jégo Quéré, [2002] ECR II-2365.

2002: 433), and “the EU lacks a [full]-fledged human rights policy” (Alston & Weiler, 1999: 7), the author thinks that the issue has been reduced considerably since the EC was founded. The EC is no longer an organisation that merely pursues economic objectives; instead, EU treaties and case law provide for fundamental rights. It is necessary to keep in mind that it is “unlikely that the EU would have reached this stage if the ECJ had not taken that small first step in *Stauder*” (Arnull, 1999: 223).

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