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DEPARTMENT OF EUROPEAN LEGAL STUDIES | DEPARTMENT OF EUROPEAN POLITICAL AND ADMINISTRATIVE STUDIES

Cooperative Research Paper 03 / 2013

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European Legal Studies

European Political and Administrative Studies

RESEARCH PAPERS IN LAW

3/2013

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The Strasbourg View on the Charter of Fundamental Rights

George Nicolaou[*]

May I say how delighted I am at this opportunity of talking to you today about the perspective of a Strasbourg judge on the Charter of Fundamental Rights of the European Union.[1] It goes without saying that the views I here express are not to be attributed to the Court itself; yet they may be taken as reflecting, in a general sense, what I regard to be the Strasbourg approach.

The European Convention on Human Rights (ECHR), which was adopted some sixty years ago, did more than just declare rights in the abstract, as other human rights instruments had previously done. It was not meant to be a mere guide, indicating to member states what they should ideally be aiming at. It singled out the most important civil and political rights and freedoms, which had repeatedly been proclaimed as universal, and gave them a tangible, present significance. They were imperatively to be respected. So they were made the subject of ultimate collective responsibility. A control mechanism, based on the principle of subsidiarity, was set up and reformed over the years. Today it consists of the permanent European Court of Human Rights (the Strasbourg Court), complemented by the Committee of Ministers as the body which supervises enforcement.[2]

In parallel with the very task-specific Strasbourg system of human rights protection, there arose in the development of Western Europe after the Second World War another important strand, leading indirectly and gradually to a climate conducive to such protection. I refer of course to the emergence of a new system of economic cooperation, that of the European Economic Community which aspired, as it grew and prospered, to embrace and to incorporate within its essential economic aims both social cohesion and at least some measure of common political governance.[3] It soon became obvious that in fact the economic activities of the Community required a framework of fundamental rights in which to flourish. Thus it was that the European

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[*] Judge of the European Court of Human Rights.

[1] In the context of a Symposium on "Fundamental Rights in the EU three years after Lisbon" organised by the Presidency of the Council in cooperation with the College of Europe, held on 16 November 2012.

[2] The Court has over the years devised methods of making its judgments more effective by, *inter alia*, facilitating their enforcement: see "The New Perspective of the European Court of Human Rights on the Effectiveness of its Judgments", *HRLJ*, Vol. 31, 2011, p. 269.

[3] It began with the Treaty of Paris signed in 1951 by six States which set up the European Coal and Steel Community, followed in 1958 by the two Treaties of Rome, one creating Euratom and the other the EEC which, enlarged and transformed through a series of Treaties that culminated in the 2009 Treaty of Lisbon, has become the present European Union. For an overview see Allan Rosas' "The European Union: In search of legitimacy", in Vinodh Jaichand and Markku Suksi (eds.), *60 Years of the Universal Declaration of Human Rights in Europe*, Intersentia, 2009.

Court of Justice (ECJ),[4] beginning in 1969 with *Stauder*, introduced and gradually built, through its case-law, a range of fundamental rights, constituting what were termed "general principles of law".[5] In this process it derived inspiration and drew freely from a number of sources: from the common constitutional traditions of member states and from international instruments relevant to the matter, the most important of all being the ECHR to which the ECJ attached special significance.[6] In this process the aim was to ensure legality in the Community legal order, whether such legality related to Community action or to the application of Community law by member States. Although the ECHR provided an invaluable point of reference, there was no comprehensive and easily accessible list emanating from the Community itself. The Charter of Fundamental Rights has now filled that gap. It was first proclaimed on 9 and 10 December 2000 at Nice and adopted by the European Parliament, the Council and the Commission.[7] It was amended and readopted on 12 December 2007 at Strasbourg.[8] It comprised, if I may put it shortly, of existing general principles of law, including those set out in the ECHR and the relevant Strasbourg case-law, re-defining some and according them a broader scope. Now, under the Treaty of Lisbon, the Charter has become part of EU primary law.[9] An explanatory memorandum accompanying the Charter provides general guidance. It is expected that all this will make for greater uniformity in the application of EU law.

Within the EU the Charter had, for certain purposes, an almost immediate impact even though it had no legally binding effect. Legislation that was introduced made reference to it; Advocates-General relied on it in support of arguments and propositions; gradually judicial use was made of it as well, initially by the Court of First Instance[10] which referred to the Charter as a new source of general legal

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4 Renamed by the Treaty of Lisbon as the Court of Justice of the European Union (CJEU).

5 Fundamental rights were not mentioned in the original Treaties and the ECJ was at first unsympathetic to including them in its case-law but then, in the context of its remarkable judicial activism, it gradually introduced them into the system as a matter of expediency in view of the refusal of the German Constitutional Court to otherwise accept the primacy of Community Law; through a line of cases, *Stauder*, (Judgment of 12 November 1969, Case 29/69, ECR 419), *Internationale Handelsgesellshaft* (Judgment of 17 December 1970, Case 11/70, ECR 1125), *Nold* (Judgment of 14 May 1974, Case 4/73, ECR 491), and *Rutili* (Judgment of 28 October 1975, Case 36/75, ECR 1219) the ECJ lay increasingly emphasis on fundamental rights and, as from 1975, on the European Convention on Human Rights. For a summary of these developments see "The European Union and Fundamental Rights/Human rights" by Allan Rosas, in Catarina Krause and Martin Scheinin (eds.), *International Protection of Human Rights: A Textbook*, 2009.

6 See *supra* at note 5.

7 OJ C 364, 18.12.2000, p.1.14.12.207, C303/1.

8 OJ C 303, 14 12 2007; and see also OJ C 83, 30.3 2010.

9 Article 6(1) TEU as adopted in the Treaty of Lisbon accords the Charter the same value as that of a Treaty. The Charter itself provides in Article 51(1) that it is "addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law." As to generally the applicability of the Charter see *A fresh Start for the Charter: Fundamental Questions on the Application of the European Charter of Fundamental Rights* by Thomas von Danwitz and Katherina Paraschas.

10 Renamed by the Treaty of Lisbon as the General Court.

principles, thus placing it more or less on a par with the ECHR; and subsequently, in 2006, by the ECJ with whose judgment in the case of *Parliament v. Council*[11] the Charter, as it then stood, reached a high-water mark.[12] From the Strasbourg point of view the Charter, as an "international text", exerted an influence right from the beginning, though its present treaty rank has certainly added to that.[13]

The case in which the Strasbourg Court first referred to the Charter and derived support from it was that of *Christine Goodwin v. the UK.*[14] The applicant complained, *inter alia*, that the United Kingdom authorities had failed in their positive obligations concerning her right to respect for private life and the right to marry under, respectively, Articles 8 and 12 of the Convention. The complaints arose because the domestic law did not allow alterations to be made to the register of births subsequent to the initial entry, which meant that the register could not reflect gender change, thus placing the applicant, who had undergone gender re-assignment, at a disadvantage. The Court spoke of the stress, the vulnerability, the alienation and the humiliation that resulted from the conflict between the new reality, in respect of the applicant, and the law which refused to recognize that reality. What is interesting and germane to the present purpose was that the Court had examined essentially the same problem in three earlier United Kingdom cases, one of them quite recently - *Rees v. the UK,*[15] *Cossey v. the UK,*[16] X., Y. and Z. v. the UK,[17] and *Sheffield and Horsham v. the UK*[18] - and had not found a violation. So what was it that turned the scales? In *Christine Goodwin* the Court inquired again as to whether there was "any evolving convergence as to the standards to be achieved" but did not discern any evidence of that in Europe. However, it attached more importance to an uncontested continuing international trend in favour of legal recognition of gender re-assignment and, in that regard, it included in its comments the liberal view taken in Australia and New Zealand. Further, it observed that there were, in the domestic debate on the matter,

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11 Judgment of 27 June 2006, C-540/03, ECR I-5769, paragraphs 38 and 39.

12 In fact the ECJ initially showed reluctance, since the Charter was seen as merely affirming rights that its case-law had already recognized. Interestingly in the *Mangold* case (Case C 144/04, 2005, ECR I-9981), which concerned the principle of non-discrimination in respect of age, the Court recognized that principle on the basis of EU provisions and not on the basis of the Charter; yet in the *Kücükdeveci* case (Case C 555/07, judgment of 19 January 2010), on facts preceding the Charter but decided after the Lisbon Treaty, the Court relied on Article 21 of the Charter in respect of that principle rather than on the basis on which the *Mangold* judgment was founded: commented on in "The Charter of Fundamental Rights of the European Union after Lisbon" by Juliane Kokott and Christoph Sobotta, *EUI Working Paper*, AEL 2010/6.

13 As to the Charter's influence over the years, see "La Charte des droits fondamentaux de l' Union Européene dix ans après sa proclamation" by Florence Benoit-Rohmer, *European Yearbook on Human Rights*, Intersentia, 2011.

14 [GC], no. 28957/95, ECHR 2002-VI.

15 Judgment of 17 October 1986, Series A no. 106.

16 Judgment of 27 September 1990, Series A no. 184.

17 Judgment of 22 April 1997, *Reports of Judgments and Decisions* 1997-II.

18 [GC], no. 22985/93, ECHR 1998-V.

developments going in the same direction. Finally, in connection with the right to marry, the Court referred to the Charter and noted in that respect that Article 9, in contrast to the corresponding Article 12 ECHR, made no reference to men and women, thus at least attenuating the significance of gender distinction and lending support to what the Court viewed as major social changes in the institution of marriage since the adoption of the Convention. Considering that although it should not depart from precedents without good reason, yet there would be a risk of barring reform or improvement unless a "dynamic and evolutive approach"[19] was maintained. The Strasbourg Court has had occasion more recently, after the Treaty of Lisbon,[20] to refer to Article 9 of the Charter in the case of *Schalk and Kopf v. Austria*[21] and to examine it in rather more detail, in the light of the relevant explanations accompanying the Charter. The Court drew conclusions from that as to what its interpretative approach to Article 12 of ECHR should be and what the ramifications might be. The case concerned the complaints of a same sex couple, under Article 12 (right to marry) and Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life) of ECHR. Of relevance here is only the first complaint. The Court, after recalling its statement in the *Christine Goodwin* case that the institution of marriage had undergone major social changes since the adoption of the Convention, pointed out that these changes had to be reconciled with the fact that still only six out of the forty seven Convention States allowed same sex marriage. The Court went on to compare the two corresponding provisions, i.e. Article 12 ECHR and Article 9 of the Charter, as it had done in the case of *Christine Goodwin*.[22] It noted that the Charter had deliberately dropped the reference to men and women thus confirming that it was meant to be broader in scope while, at the same time, the reference to national laws governing the matter reflected the diversity that existed in member states and so, arguably, although there was no obstacle to recognizing same sex marriage, there was no explicit requirement to facilitate such marriage either. The Court's *ratio decidendi* is summed up in the

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19 Taken from *Stafford v. the UK,* [GC], no. 46295/99, judgment of 28 May 2002, Reports of judgments and Decisions 2002-IV. The concept of "evolutive", on which so much has been written, is well defined although not free from controversy; but what are the parameters of a "dynamic" interpretation? Is this latter more connected with the part of the Convention's preamble which envisages a "further realization of human rights and fundamental freedoms"? See, more generally, John Tobin's "Seeking to Persuade: A Constructive Approach to Human Rights Treaty Interpretation"*, Harvard Human Rights Journal*, Vol 23, 2010.

20 Signed at Lisbon, 13 December 2007, OJ C 306, 17.12.2007.

21 Application no. 30141/04, 24 June 2010.

22 Article 12 ECHR provides that: "Men and women of marriageable age have the right to marry and found a family, according to the national laws governing the exercise of this right". Whereas Article 9 of the Charter provides that: "The right to marry and to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights".

following passage which, quite clearly, put considerable emphasis on Article 9 of the Charter:

> "61. Regard being had to Article 9 of the Charter, therefore, the Court would no longer consider that the right to marry enshrined in Article 12 must in all circumstances be limited to marriage between two persons of the opposite sex. Consequently, it cannot be said that Article 12 is inapplicable to the applicant's complaint. However, as matters stand, the question whether or not to allow same-sex marriage is left to regulation by the national law of the Contracting State".

It consequently found that there was no violation. I should, perhaps, explain that when in such cases the Strasbourg Court looks at EU law, instruments or texts and comments on their import and effect, it does not purport to interpret them. That is not its task. The Court's purpose is to inquire whether it can derive assistance from them in interpreting ECHR provisions: see *Diallo v. the Czech Republic.*[23] However, in so far as the Charter is concerned, the Strasbourg Court will, more particularly, be comparing the respective provisions in order to ascertain whether the rights depicted in the two instruments correspond or whether the Charter provides a more extensive protection: Article 52(3). If the latter is the case, the Court will reflect on whether it can follow in the same direction through a dynamic and evolutive interpretation of the Convention text.

The broader scope of the Charter compared to that of the ECHR, is thus of undoubted value to the Strasbourg Court. However, this must be seen in perspective. The Court has regard and refers in its judgments to all international law documents and texts that may be relevant in the particular case. Still, the comparison with the Charter is always of special interest even though the relevant provision may not have a direct bearing on the result. I would in this regard mention indicatively *Saadi v. the UK*[24], *Salduz v. Turkey,*[25] and *Scoppola (No.2) v. Italy.*[26] This is not to say, however, that other EU materials are necessarily of lesser importance. Indeed, where they do bear on the matter in question they are likely to be especially significant for the Strasbourg Court. I would, again indicatively, refer in this regard to the case of *D. H. and Others v. the Czech Republic,*[27] where the Court examined complaints about race discrimination. Extensive reference was made there to numerous sources of international law but particular importance was attributed to Community Law and Practice. The Court, after pointing out that Article 13 of the Treaty establishing the European Community was an important provision which gave rise to a large number of instruments prohibiting discrimination or requiring equal treatment, dealt at length

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23 Application no. 20493/07, 23 June 2011.
24 [GC], no. 13299/03, 29 January 2008.
25 [GC], no. 36391/02, 27 November 2008.
26 [GC], no. 10249/03, 17 September 2009.
27 [GC], no. 57325/00, 13 November 2007.

with two Council Directives made under that Article. It cited a large number of judgments of the ECJ and set out relevant passages.

So what obtains in the EU is invariably of interest to the Strasbourg Court and this quite transcends the Charter itself. The Grand Chamber judgment in the case of *Zolotukhin v. Russia*[28] affords a good example. It concerned the *non bis in idem* principle, embodied in Article 4 of Protocol No 7 to the ECHR. According to this provision, so far as relevant to the present purpose, no one shall be liable to be tried or punished again for the same offence. What is key is the word "offence". Article 50 of the Charter is in this respect similarly phrased;[29] and so too is Article 14(7) of the United Nations Covenant on Civil and Political Rights. But Article 54 of the Convention Implementing the Schengen Agreement of 14 June 1985 (CISA), which contains a prohibition embodying that principle, relates to the same "facts" not "offence"; and a like approach is taken in Article 20 of the Statute of the International Criminal Court, which refers to the same "conduct" this being, essentially, equivalent to the same "facts". The case-law of the Strasbourg Court on this matter, which spanned a considerable period of time, lacked consistency in the interpretative approach to the meaning of the notion of "offence" in the context of Article 4 of Protocol No 7. In one line of cases the Court focused on the "same conduct";[30] in another it laid emphasis on how such conduct might be classified, thus justifying more than one charge;[31] and then in a third, in order to lessen the impact of the classification test which considerably weakened the protection afforded by that provision, it introduced "the essential elements" qualification, which aimed at avoiding a subsequent prosecution for offences that were only "nominally different".[32] I appreciate that these differences may not be readily understood without a detailed analysis of the case-law; it is nonetheless easy to realize that there was a real problem to be solved. The Court in *Zolotukhin* decided to remove the existing uncertainty which, as it rightly recognized, was incompatible with such a fundamental right. The solution it chose took into account the ECJ case-law: *Limburgse*,[33] *Portland*,[34] *Esbroeck*[35] and *Kraaijenbrink*[36] which discussed the principle in various

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28 [GC], no. 14939/03, 10 February 2009.

29 While, however, the Charter prohibition applies to the whole of the EU area as one space, that of the ECHR applies only within the specific jurisdiction of a member State.

30 Exemplified in *Gradinger v. Austria,* Judgment of 23 October 1995, Series A no. 328-C.

31 See indicatively *Oliveira v. Switzerland,* no. 25711/94, Judgment of 30 July 1998, ECHR 1998-V.

32 Introduced by *Franz Fischer v. Austria,* no. 37950/97, Judgment of 29 May 2001, frequently followed.

33 *Limburgse Vinyl Maatschappij NV (LVM) and others v. Commission,* C-238/99 P and others, 15 October 2002.

34 *Portland and others v. Commission,* C-204/00 P and others, 7 January 2004.

35 *Leopold Henri Van Esbroeck,* C-436/04, 9 March 2006.

36 *Norma Kraaijenbrink,* C-367/05, 18 July 2007.

contexts, including that of CISA, in respect of which the ECJ said that the real criterion consisted of "an identity of the material acts understood as the existence of a set of concrete circumstances which are inextricably linked together". This fact-based criterion explained in effect how to determine whether the facts are the same; and it obviously differed from the criterion which turned on whether on one view or another the facts constituted the same "offence", which is the word used both in the Charter and the ECHR as the basis for the prohibition. The Strasbourg Court, after carrying out an exhaustive review, streamlined itself with this ECJ interpretation – which, let it be noted, is not free from controversy that relates to distinctions on subject matter – and settled for the "same facts" (meaning also "the same acts") interpretation. It reasoned this by saying that Article 4 of Protocol No 7 "must be understood as prohibiting the prosecution of or trial of a second offence in so far as it arises from identical facts or facts which are substantially the same". At the end of the day what is crucial is that the principle in question, however worded, should be interpreted in a uniform way.

More recently, in the case of *Bayatyan v. Armenia*,[37] where the question was whether conscientious objection to military service should be recognized as a right, the Charter, which by that time had acquired binding effect in the EU, proved particularly useful to the Grand Chamber of the Strasbourg Court. It was taken to confirm a broader change internationally and, more particularly, in Europe. The Chamber had followed well established case-law of the European Commission of Human Rights, according to which Article 9 (on the right to freedom of thought, conscience and religion), when viewed in the light of Article 4 § 3(b) (on the prohibition of slavery and forced labour) which does not regard military service as forced or compulsory labour, did not encompass a right to conscientious objection. The Grand Chamber took a different view. It observed that since 1993 the United Nations Commission on Human Rights had considered that the International Covenant on Civil and Political Rights did give rise to such a right; that in fact an overwhelming majority of Council of Europe States had already recognized this right, which meant that there was general consensus in Europe; that there was also consensus further afield; and that the right was explicitly recognized by paragraph 2 of Article 10 of the Charter. The Grand Chamber said that:[38]

> "Such explicit addition is no doubt deliberate…and reflects the unanimous recognition of the right to conscientious objection by the member States of the European Union, as well as the weight attached to that right in modern European society".

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37 [GC], no. 23459/03, 7 July 2011.

38 At paragraph 106.

I should not, perhaps, conclude this selection of cases which illustrate how the Charter has been used by the Strasbourg Court, both before and after having been given legal effect, without adverting even very briefly to Article 47, which is analogous but apparently wider in scope than Article 6 ECHR. In two cases the Strasbourg Court was encouraged to reconsider, in the light of the Charter provision, the ambit of Article 6 § 1 and to expand its field of application. The first case, *Vilho Eskelinen and Others v. Finland,*[39] considerably extended the applicability of Article 6 § 1 to employment in the civil service, thus increasing access to court. In fact Article 47 of the Charter reflected in this regard the broad scope of judicial control, as already fixed in Community Law by the ECJ judgment in *Marguerite Johnston v. Chief Constable of the Royal Ulster Constabulary.*[40] However it is difficult to say whether, without prompting from the Charter, the Strasbourg Court would have delved into Community law to the extent that it did or would have felt equally comfortable with the conclusion that it reached.[41]

The second case was *Micallef v. Malta.*[42] It had previously been held by the Strasbourg Court that interim measures in judicial proceedings did not fall within Article 6 § 1. This was because of the view that they did not amount to disputes about civil rights and obligations or a criminal charge. In *Micallef*, which had been examined by the domestic courts in connection with an interlocutory matter, the Strasbourg Court noted that a consensus in favour of applicability had developed amongst Council of Europe States; that Community case-law was to the same effect; and that this was reflected in Article 47 of the Charter.

It is clear that the Charter has encouraged the Strasbourg Court to interpret protected rights through the prism of a newer understanding. At the same time it is to be remembered that the ECJ had, from quite early on, in the case of *Rutili*[43] in 1975, recognized the special significance of the ECHR itself, as part of the sources from which the general principles of Community law were to be derived, in other words, identified and expounded. In time this relationship was fortified and formalized by Article 6(2) - now 6(3) - TEU which provided that fundamental rights, as guaranteed by the ECHR, constitute part of the EU as general principles of law. In addition, Article 52(3) of the Charter provides, in furtherance of the principle of homogeneity, that the meaning and scope of rights in the Charter are the same as those of the

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39 [GC], no. 63235/00, 19 April 2007.

40 Case 222/84, 1986, ECR 1651.

41 The Strasbourg Court had previously, looking at Community law, made an important step forward in *Pellegrin v. France* [GC], no. 28541/95, (§66), ECHR 1999-VIII; but the case of *Marguerite Johnston,* which considerably pre-dated it, had no impact until the Charter came along.

42 [GC], no. 17056/06, 15 October 2009.

43 See *supra* at note 5.

corresponding ECHR rights. The contribution of the ECHR has indisputably been substantial. And it should be noted that it is not just the Convention text which is taken into account by the Luxembourg Court. It is, more importantly, the Strasbourg case-law which gives life to the text. We are reminded of the Strasbourg contribution by former ECJ Advocate-General Jacobs, in the following passage:[44]

> "The ECJ has treated what is perhaps the most fundamental treaty in Europe, the European Convention on Human Rights, as if it were binding upon the Community, and has followed scrupulously the case-law of the European Court of Human Rights, even though the European Union itself is not a party to the Convention."

In fact the two systems, the ECHR and the Community - now the EU - have been beneficially interacting through their respective Courts which, over the years, have been sensitive and receptive to human rights developments. They have established, through mutual respect, a truly harmonious relationship as the necessary means for achieving coherence in the protection of human rights. The ECtHR judgment *in M.S.S. v. Belgium and Greece,*[45] followed later in the same year by the CJEU judgment in *N.S. v.* Secretary *of State for the Home Department* and *M.E. and Others v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform,*[46] is yet another illustration of the common direction of the two courts. But the full process will only be completed upon accession of the EU to the ECHR.[47] As the present President of the Court has recently put it in a keynote address at the University of Surrey, the Charter and accession are complementary measures.[48]

Apart from the direct influence that the Charter has initially had as a Community text and, subsequently, during almost three years now as part of EU primary law, there has been another less conspicuous but significant effect, of interest not only to the EU but to the Convention system as well. You will recall that soon after the Charter was proclaimed, the Commission decided - that was in March 2001 - to subject every proposed act to a prior check of conformity with the Charter, resulting in a declaration of compatibility which would be appended and that, to this end, an appropriate mechanism was put in place. You will also recall that in 2005 it was sought to make

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44 Francis G. Jacobs, *The Sovereignty of Law*, Cambridge University Press, 2007, p. 54; cited by Johan Callewaert, Deputy Registrar of the Grand Chamber of the ECtHR in his article "The European Convention on Human Rights and European Union Law: a Long Way to Harmony", *European Human Rights Law Review*, Issue 1, 2009, p. 768.

45 [GC], no. 30696/09, 21 January 2011.

46 Judgment of 21 December 2011 in joined Cases C-411/10 and C-493/10.

47 The following articles, the one just before the Lisbon Treaty and the other a little after, are illustrative of an ongoing debate on the matter: Tobias Lock, "The ECJ and the ECtHR: The Future Relationship between the Two European Courts", *The Law and Practice of International Courts and Tribunals*, Vol. 8, 2009, pp. 375-398; and Zdzislaw Kedzia, "Relationship Between the European Convention on Human Rights and the Charter of Fundamental Rights After the European Union's Accession to the Convention", in Jan Barcz (ed.), *Fundamental Rights Protection in the European Union,* C.H. Beck, 2009.

48 "A Europe of Rights: the European Union and the European Court of Human Rights", Keynote Address by Judge Dean Spielman, University of Surrey School of Law Workshop, 8 June 2012.

this legality control more effective by providing that due reasoning be given so as to make compatibility easily apparent. Following the Lisbon Treaty, the Commission has been implementing an updated strategy that takes account of the new legal environment.[49]

Prior control procedure has become possible or, at least, substantially facilitated by reason of the fact that the Charter has made a broad spectrum of rights, albeit already recognized, both visible and tangible and, therefore, accessible for use as a practical yardstick at an early stage in the legislative process. The most effective vindication of rights is that which occurs before rights have been infringed. Human rights should be secured at source. A judicial finding of an infringement is always only second best.

[49] See COM(2010)573 final.