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The Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of Persons with Disabilities: a dynamic *pro unione* and *pro homine* with particular reference to the CJEU case-law.

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ABSTRACT: The incorporation of the United Nations Convention on the Rights of Persons with Disabilities into the legal order of the European Union acquires a centrality relevant to the interpretation of the fundamental rules within the framework of the catalog of rights enshrined in the Charter of Fundamental Rights of the European Union. The case-law of the Court of Justice of the European Union constantly reminds us that the Convention is an integral part of the legal order of the European Union and prevails over European Union law.

KEYWORDS: UN Convention on the Rights of Persons with Disabilities – Charter of Fundamental Rights of the European Union – dialogical relationship – Persons with Disabilities – CJEU case-law.

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I. Introduction¹

This study aims to contribute to and understand the incorporation of the UN Convention on the Rights of people with disabilities (CRPD) in the legal system of the European Union itself, with special emphasis on the articulation of the catalogues of the rights recognized by the Charter of Fundamental Rights of the European Union (CFREU) with the Convention itself. This study seeks to answer an essential question: *is the effectiveness of the CRPD properly secured in the respective protection levels in European Union law, particularly the Charter of Fundamental Rights of the European Union?*

This is the first time that an international human rights treaty, such as the CRPD, has been ratified by the European Union itself as the addressee of the conventional obligations that are directly binding in the legal order of the European Union itself, under the terms of Article 44 of the CRPD, in accordance with Council Decision 2010/48 of 26 November 2009 on the conclusion by the European Community of the CRPD. At the same time, twenty-eight Member States have already ratified the Convention in their own national legal order.

The pair strengthened and the complementary position of the CRPD binds, on the one hand, Member States to the own legal system and, on the other hand, indirectly links the Member States through EU membership, as part of the EU legal order, to the extent of its competence in the national legal order, wherever the EU legal framework applies.

Again, it is the first time that the European Union itself has been monitored by the United Nations Committee on the Rights of Persons with Disabilities in fulfilling its obligations under the Convention (September 2015). According to the European Parliament's report, the concluding observations of the UN Committee "*have sent a strong message on the EU's commitment to equality and respect for human rights and provided a set of guidelines for legislative and policy measures within the competence of the EU*".²

According to the European Parliament's report, there are approximately 80 million disabled people in the European Union, representing around 10% of the population in the European Union. Considering that any and all disabled people are seen as full citizens, on an equal basis with others, persons with disabilities enjoy the same rights and have the right to inalienable dignity, equal treatment, autonomy, the support of publicly funded schemes and full participation in society.³

The acting of the institutions of the European Union is established in accordance with the Treaty of Lisbon; the European Union in its political actions and enforcement of the necessary measures aims to combat discrimination on the grounds of disability under Articles 10 and 19. Moreover, it is enshrined in Articles 21 and 26 of the CFREU that the recognition of equality and non-discrimination on the grounds of disability is unequivocal and, on the other hand, the rights of persons with disabilities that guarantee personal autonomy, social and professional integration and full participation

¹This text has been adapted in a European context, based on the PhD thesis entitled "*The United Nations Convention on the Rights of Persons with Disabilities in the Portuguese legal order: contribution to the understanding of the *jusfundamental statute**", concluded and defended at the School of Law of the University of Minho.

² European Parliament Resolution of 7 July 2016 on the implementation of the United Nations Convention on the Rights of Persons with Disabilities, in particular with regard to the concluding observations of the United Nations CRPD Committee (2015/2258 (INI)) July 7, 2016.

³ European Parliament Resolution of 7 July 2016 on the implementation of the United Nations Convention on the Rights of Persons with Disabilities, in particular with regard to the concluding observations of the UN CRPD Committee (2015/2258 (INI)) July 7, 2016.

in society are inalienable.

The provisions of the CRPD go far beyond the antidiscrimination clause, much less the mere proclamation clause, which is substantively strengthened in the content of their rights adapted to the disability sphere, pointing the way towards full enjoyment of the fundamental rights and freedoms of all and any persons with disabilities, in an inclusive and accessible society.

The Convention and the Charter together constitute the fundamental pillars of the protection of fundamental rights – as a general principle of European Union law – in the legal order of the European Union. From this point of view, this study intends to focus the relationship between the catalogues of the rights enshrined in the Convention and the rights recognized by CFREU.

II. The incorporation of the CRPD in EU legal order

1. The general considerations

In the 21st century, the first international human rights treaty of this century, the CRPD, within the United Nations, arose because of the need to strengthen the human rights of persons with disabilities, which generated a number of studies recognizing the importance of the human rights issue of people with disabilities.

The process of drafting the CRPD lasted four years, an unprecedented period of time – for being so quick – in the history of the United Nations. This process was finalized on 13 December 2006 with the approval of the CRPD by the UN Assembly.

The process was also characterized by the full participation of non-governmental organizations of persons with disabilities, UN bodies and States that negotiated the fundamental legal instrument for the rights of persons with disabilities, transforming the need to these people as a key issue to the international human rights system. It is a turning point for international human rights law, recognizing people with disabilities as *subjects* of rights, equal to the rest, and not as an *object* of protection, making it clear that, throughout history, issues such as invisibility, marginalization, exclusion and discrimination of persons with disabilities could not be maintained in human rights discourses.

The purpose of the Convention was not to create “*new*” rights, but rather to adapt and strengthen substantive rights through specific safeguards for people with disabilities, implementing all human rights for these persons in a context of non-discrimination, equality of opportunity, autonomy, participation and integration. It is important to remember that the adoption of the CRPD is done in a written *form* to guarantee the same human rights, not in the sense of creating, in principle, new rights; only to adapt those same human rights to the situation of people with disabilities. It is true that the CRPD presents new normative dimensions that other human rights treaties do not provide, for example, universal accessibility, personal mobility and rehabilitation, as well as specific norms for the rights of deaf people, which are recognized by the CRPD.

The normative structure of the CRPD has a preamble and 50 articles dealing with human rights, of a mixed nature (civil and political rights and economic, social and cultural rights), adapted to persons with disabilities as holders of all human rights and fundamental freedoms, as well as the obligations of States. It is, therefore, an extensive convention, in comparison with other human rights treaties.

The EU was the first regional organization to ratify the CRPD by decision of the European Council adopted on 26 November 2009 under Article 44 of the CRPD, on the assumption that regional organizations are eligible to accede to the CRPD, as well as their entry into force in the European Union on 21 January 2011, in accordance with Council Decision 2010/48 of 26 November 2009 on the conclusion by the European Community of the CRPD.

According to Article 216 of the TEU, the EU has competence to conclude and accede to international treaties, for example in the field of human rights. Consequently, the European Council, in its decision to become party to the CRPD, supplemented it with a declaration defining its competences, in the context of the implementation of the CRPD, namely Article 44 (1) of the CRPD, in the European legal order, which will be discussed below.

After its entry into force, the CJEU refers to a number of cases concerning the legal treatment of persons with disabilities, in particular, regarding the interpretation of Directive 2000/78, which creates a general framework for combating discrimination, on grounds of religion or belief, disability, age or sexual orientation, as regards employment and occupation, with a view to implementing in the Member States the principle of equal treatment.

The Directive itself does not have a concept of persons with disabilities and is thus, bound to the interpretation established by the CJEU, based on Article 1 of the CRPD – an essential aspect of clarifying the interpretation and application of the rights of persons with disabilities in the application of European law in national legal systems. In order to determine the assumptions of the concept of persons with disabilities, taking into account Article 1 of the CRPD, the CJEU has already made a significant effort, and it is possible to find a number of jurisprudential references on this issue.

Following the ratification of the CRPD, the CJEU has substantially amended its case-law, taking into account Article 1 of the CRPD, which recognized the *social model* of disability, stating that the concept of disability “*has to be understood as referring to a limitation of capacity which results in particular from long-term physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers*”.⁴

The social model is aimed at promoting a human rights perspective, implying to the State and to society in general the essential function of eliminating obstacles, at various levels, leading to the exclusion of persons with disabilities, and ensuring respect of their rights and their dignity. Consequently, the State, and society in general must adapt to the needs of people with disabilities, facilitating the full enjoyment and effective exercise of their rights, for example, through the making of appropriate adjustments in the architecture of the way of buildings to allow access to adapted public services, or, for example, through the use of the Sign Language interpreter.

Finally, the visibility of the adoption of the CRPD marks a turning point in the legal treatment of these people’s human rights, raising awareness of and sensitizing States Parties to the phenomenon of people with disabilities, and particularly the need

⁴ *Vide* Judgment *Milkova*, 9th March 2017, C-406/15, EU:C:2017:198, paragraph 36; Judgment *HK Danmark*, 11th April 2013, C-335/11 and C-337/11, ECLI: EU:C:2013:222, paragraph 38; Judgment *Z*, 18th March 2014, C-363/12, ECLI: EU: C: 2014: 159, paragraph 76; Judgment *Fag og Arbejde*, 18th Dec. 2014, C-354/13, ECLI: EU:C:2014:2463, paragraph 53; Judgment *Wolfgang Glatzel*, 22nd May 2014, C-356/12, EU:C:2014:350, paragraph 45.

to respect and promote the rights of persons with disabilities. The CRPD thus, has a meaning that transcends the legal field and represents, from the social and legal point of view, the definitive recognition of the human rights of these people.

2. The link between the CRPD and the application of European Union law in the light of the settled case-law of the CJEU

Since its entry into force, the European Union itself becomes, for the first time, part of the Convention, in accordance with Decision 2010/48. Consequently, the provisions of the Convention form an integral part of the European Union legal order.⁵ In general, there are, within EU law, several references to persons with disabilities, mainly within the scope of CFREU, in its Articles 21 (1) and 26. The centrality of the CRPD in the interpretation of CFREU must consider the normative character as an international human rights treaty ratified by the European Union.

According to settled case-law, the European Union is bound by the CRPD under Article 216 (2) TFEU. Consequently, the European Union itself is the recipient of the obligations established by the Convention to fulfill its conventional obligations and to contribute to the strict observance and development of International law (Articles 3, 5 and 21 (1) TEU).

The institutions of the Union and the Member States when applying European Union law directly bind the Convention itself. The Convention may be invoked to interpret and make compatible the acts adopted by the Union and the Member States when implementing European Union law. The secondary legislation of the Union should be subject as far as possible, to an *interpretation consistent* with the Convention.⁶

The legal order of the European Union covers, as a whole, the meaning, scope, context and objectives pursued by the Convention itself. According to the *principle of consistent interpretation*, by adapting the expression in Judgment of *Chatzi*⁷, European Union law must be interpreted, as far as possible, so as not to invalidate it and in accordance with the Convention. Similarly, according to Judgment of *SGAE*⁸; “Moreover, Community legislation must, so far as possible, be interpreted in a manner that is consistent with international law, in particular where its provisions are intended specifically to give effect to an international agreement concluded by the Community”. According to the Judgment of *Commission/Germany*; “Likewise, an implementing regulation must, if possible, be given an interpretation consistent with the basic regulation”.⁹

The principle of interpretation according to which, in addition, an important function, which is the *principle of effectiveness*, as expressed in the Judgment *Italy v Commission*. This principle states that while the provisions of secondary legislation are susceptible to various interpretations, priority must be given to that which is appropriate to safeguard its effectiveness, within the context of the Convention itself.¹⁰

It is recalled that, according to the general principles of International law, the implementation of the Convention in the legal order of the European Union must be

⁵ Judgment *Daouidi*, 1st Dec. 2016, C-395/15, paragraph 40; Judgment *Z.*, 18th March 2014, C-363/12, EU:C:2014:159, paragraph 73.

⁶ *Vide* Judgment *Daouidi*, 1st Dec. 2016, C-395/15, paragraph 41; Judgments, *HK Danmark*, 11th April 2013, C-335/11 and C-337/11, EU:C:2013:222, paragraph 32.

⁷ Judgment *Chatzi*, 16th Dec. 2010, C-149/10, paragraph 42-43.

⁸ Judgment *SGAE*, C-306/05, 7th Dec. 2006, paragraph 35.

⁹ Judgment *Commission/Germany*, 10th Sep. 1996, C-61/94, paragraph 52.

¹⁰ Judgment *Italy v Commission*, 4th Oct. 2001, C- 403/99, paragraph 28.

carried out in *good faith* by the institutions of the European Union. Furthermore, State Parties applying European Union law are responsible for the full implementation of its commitments, and shall determine the legal means and the appropriate forms for the intended purpose in the context of the Convention itself.¹¹ Consequently, acts of secondary legislation cannot affect or alter the meaning and scope of the provisions of the Convention.¹²

When applying European Union law, what does it consist of? In accordance with Decision 2010/48, the institutions of the European Union and the Member States may, within their respective spheres of competence, act within the situations governed by European Union law itself, in accordance with the powers conferred on the European Union and the Member States in cases covered by Union regulations. As a result, by imposing Article 44 (1) of the CRPD, situations governed by European Union law also cover matters governed by the CRPD, in terms of accessibility, autonomy and social inclusion, work and employment, personal mobility, access to information, statistics and data collection, and international cooperation.

The CJEU can only interpret derivative acts in accordance with the rules laid down by the CRPD and CFREU, within the scope of European Union law, “*within the limits of the powers conferred upon it*”.¹³ It means that since the application of CFREU is only possible in light of Article 51(1), it is expected that its provisions are addressed, in addition to the institutions of the European Union, to the Member States only when they are implementing European Union law. Accordingly, the application of the CRPD in the legal order of the European Union must take into account the competences of the European Union as defined in the Treaties, Articles 6 (1) TEU and 52 (2) CFREU. In other words, “*where a legal situation does not come within the scope of EU law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction*”.¹⁴

Consequently, the CJEU itself cannot depart from the provisions of the CRPD in the legal order of the European Union. Consequently, it is for the CJEU to examine whether the validity of the acts adopted by the institutions of the European Union and of the Member States when they apply European Union law is affected by the fact that they are in conflict with the CRPD, whether they were in a position to satisfy themselves that the provisions in question were unconditional and sufficiently precise from the point of view of the content.

For example, within the scope of Article 2 of Directive 2000/78, the question at issue here is whether a national measure falls within the scope of that Directive and as such, pursues an objective covered by European Union law. It is settled case-law that the national measures adopted must be verified, whether they belong to the field of application of European Union law within the meaning of Article 51 (1) of the CFREU or not. The CJEU considered that “*According to established case-law, where Member States act within the scope of EU law, they are required to respect fundamental rights defined in the context of the European Union and the general principles of EU law [...] The fact that, as is apparent from Article 7(2) of Directive 2000/78, Member States are not required to maintain or adopt measures such as those provided for under that provision, but have discretion in that regard, does not permit the conclusion that rules adopted by Member States, such as those at issue in the main proceedings, fall*

¹¹ Judgment *Portugal/ Council*, 23rd Nov. 1999, C-149/96, paragraph 35.

¹² Judgment *Algemene Scheeps Agentuur Dordrecht*, 12th Jan. 2006, C-311/04, paragraph 25.

¹³ Judgment *Daouidi*, 1st Dec. 2016, C- 395/15, paragraph 61.

¹⁴ Judgment *Daouidi*, 1st Dec. 2016, C- 395/15, paragraph 63.

*outside the scope of EU law [...] In that regard, it must also be recalled that where EU legislation allows Member States a choice between various methods of implementation, the Member States must exercise their discretion in accordance with general principles of EU law, including the principle of equal treatment [...] follows that the national legislation applicable to the main proceedings falls within the implementation of EU law, which means that, in the present case, the general principles of EU law, including the principle of equal treatment, and of the Charter are applicable [...]*¹⁵

According to the meaning of Article 51 of the CFREU, in the context of the CRPD, the concept of the scope of Union law is to affirm that there is a nexus of normatively clear and direct communication between an act of European Union law, the European Union and by the Member States when they apply European Union law, and the provisions of the Convention as a parameter for the validity of legislative acts and for the interpretation of CFREU, in accordance with the competences envisaged in the European Union.

For the purposes of the application of fundamental rights, as general principles of the EU law, respect for the CRPD is applicable to a European legislative act and/or to national legislation because the rules of European Union law impose on Member States specific obligations to supplement the specific contents (other than cases not covered) for certain situations governed by European Union law in accordance with the CRPD.

The provisions of the CRPD are directly applicable in the legal systems of the States Parties when they apply European Union law and in the European Union legal order, the acts adopted by their institutions, binding the European and national authorities to its conventional application, insofar as the Convention establishes an essential *standard* of rights and freedoms to be enshrined in European and national standards when applying European Union law, within the scope of Article 53 of the CFREU.

Article 4 (1) (d) of the Convention gives the European and national authorities, within their respective competences, the task of verifying and complying with the compatibility of European Union law with the Convention. It is for the CJEU to verify, within the limits of its powers, compliance with the obligations of the European Union, with regards to the catalogue of fundamental rights and freedoms recognized by the Convention. The catalogue of rights protected by the Charter incorporates the rights enshrined in the Convention within the framework of the powers reserved to the European Union. Article 53 of the Charter is close to the purposes of Article 4 (4) of the Convention, under *the horizontal clause*, in order to ensure the links between the catalogues of rights enshrined in the Convention and the Charter as a whole.

3. The dialogical relationship between CRPD and CFREU

Articles 4 (4) of the CRPD and 53 of the CFREU essentially have the same perspective on this issue. That is, they are interested in the protection of fundamental rights. CRPD and CFREU are in constant interaction. The *pro homine* clause is close to the *principle of a highest level of protection of fundamental rights*. Article 53 of the CFREU aims at a minimum standard of protection of the rights. However, whenever national law, or of the CRPD itself, reveal its rules protecting the rights protected, these rules may prevail. It is true that the provisions of the CFREU and the CRPD complement each other for the purpose of interpreting the useful effects of the European catalogue

¹⁵ Judgment *Milkova*, 9th March 2017, C-406/15, paragraph 50-54.

of fundamental rights and freedoms.

The scope of the protection of fundamental rights is concerned with the effectiveness of their rights interconnected by both sources: the CRPD and CFREU. It does not matter whether one prevails or replaces one source of law over another. It is important to establish dialogue between the CRPD and CFREU.

And what does *dialogic interaction* consist of? It is substantive harmonization, or material complementarity, between the CRPD and CFREU at the *fundamental level*. Dialogic interaction means that normative dialogue prevails, to the detriment of a divorce between these sources, explaining that the CRPD and CFREU reveal, in addition, the same purpose, in this case, the search to safeguard the rights of people with disabilities in the legal order of the European Union. The Convention itself reveals the way in which it strengthens the rights guaranteed by the CFREU, within the terms of the powers reserved to the European Union.

The essential assumption of dialogic interaction is based on the *horizontal* interactive *compatibility* between the CRPD and CFREU, in the area of protection of fundamental rights, not mutually exclusive, dialoguing and articulating these norms, building a *corpus juris* in which possible conflicts are solved by appeal to the *pro homine* clause.

The scope of protection of the fundamental rights of persons with disabilities is not limited to the scope of the CFREU, since the CRPD itself provides for the effectiveness of the catalogue of rights protected by the CFREU. Not only is this a hierarchical question, but the question of material compatibility - much more than a formal perspective per se - is in favour of the effective protection of fundamental rights, in order to apply the rules of the CRPD and the CFREU, which have legal relevance in the protection.

The dialogic interaction does not mean that the choice is made according to the standard that is considered best applied, meaning that it must act in accordance with the common frame of reference of the fundamental rights of persons with disabilities doubly protected by the CRPD and CFREU.

On the basis of the criteria of the *pro homine* clause, the following points are worthy of note (i) the *object* – being in question the norm that is about the protection of a certain right(s), and a legal framework for the protection of that right exists; (ii) *scope* – whether the rule on that right has a broad and/or non-restrictive scope of protection of fundamental rights; (iii) the *method* - checking whether the criteria of the *pro homine* clause allow, on the basis of *interpretative preference* and, alternatively, *normative preference*, to make a better application in the specific case.

These illustrate the purpose of Articles 4 (4) of the CRPD and 53 of the CFREU. Establishing a dialogical interaction between the CRPD and the CFREU, the two are built as a fundamental block in the dogmatic treatment of the fundamental rights of people with disabilities. Or rather, CFREU itself does not remove the catalogue of the fundamental rights recognized by the CRPD, in order to reinforce and complement the meaning and scope of the fundamental rights of persons with disabilities. The interdisciplinary of the CFREU and CRPD enhances the scope of protection of the fundamental rights of people with disabilities.

In the scope of Article 53 of the CFREU, the rights enshrined in the Charter should not be interpreted as restricting or prejudicing the fundamental rights, within the framework of the application of EU law, by the CRPD, which forms an integral part of the Convention, by binding the entire European Union legal order to the EU

Institutions and the States Parties themselves to implement them (i.e. the rights) in accordance with EU law.

With regard to the scope of application of EU law, the CFREU is complemented by the CRPD, with a view to strengthening and supplementing the European catalogue of the fundamental rights of persons with disabilities, by virtue of Article 26 of the CFREU.

The national courts have a duty to disregard domestic rules which are contrary to EU law and cannot, under national law, depart from the rules of EU law, which have binding legal force. The CJEU has already clarified that the EU has an obligation of effective observance and development of International law, in that, when adopting a derivative act, it must respect International law, which binds the EU institutions. In this sense, the CJEU has determined the link between the CRPD and EU law, and therefore the CRPD “ [...] *that, by virtue of Article 216(2) TFEU, where international agreements are concluded by the European Union they are binding on its institutions, and consequently they prevail over acts of the European Union [...]* It should also be recalled that the primacy of international agreements concluded by the European Union over instruments of secondary law means that those instruments must as far as possible be interpreted in a manner that is consistent with those agreements [...] It follows from Decision 2010/48 that the European Union has approved the UN Convention. The provisions of that convention are thus, from the time of its entry into force, an integral part of the European Union legal order [...]. Moreover, according to the appendix to the Annex II to that decision, in the field of independent living and social inclusion, work and employment, Directive 2000/78 is one of the European Union acts which refer to matters governed by the UN Convention. It follows that Directive 2000/78 must, as far as possible, be interpreted in a manner consistent with that convention.”¹⁶ This means that there is a duty of respect for the CRPD, in accordance with the competences established within the EU, regarding autonomy and social inclusion, work and employment. The subject matter of European law acts should, as far as possible, be interpreted in accordance with the CRPD.

According to settled case-law of the CJEU, the validity of any secondary legislation can be assessed by the CJEU in its compatibility with the CRPD by alluding to the following conditions: (i) the *nature* of the conventional rules allows for a review of the validity of the European legal act in the light of the CRPD if they prove to be *unconditional* and *sufficiently precise* from the point of view of content; (ii) the disclosure of obligations to the State, in a clear and precise manner, according to the content of the standard, without the need for subsequent legislative interventions, that is, those characteristics allow the immediate applicability of a certain provision.¹⁷

For this reason, in a particular case of Directive 2000/78 on equal treatment in employment and occupation, the CJEU considered that the provisions of the Convention in relation to the object of the directive under consideration were programmatic in nature, that is to say, that the provisions of the Convention were dependent on their implementation or their effects from subsequent acts emanating from the competent institutions and did not constitute unconditional and sufficiently precise rules and were therefore not capable of assessing the validity of Directive 2000/78.

Thus, it cannot always be assumed that the CRPD should not have direct application or that it should be purely programmatic. The nature of the content of the conventional rules should be interpreted according to their own context. The EU

¹⁶ Judgment *HK Danmark*, 11th April 2013, C-335/11 and C-337/11, EU:C:2013:222, paragraph 28-32.

¹⁷ Judgment *Z.*, 18th March 2014, C-363/12, EU:C:2014:159, paragraph 84-90.

itself has specific competence, in accordance with Annex II to Decision 2010/48, which contains a statement on EU competence which deal with issues governed by the CRPD and Union acts, which relate to matters governed by the CRPD, where the majority of matters of economic, social and cultural rights fall within the competence of the EU. It must be borne in mind, however, that these contractual obligations have *immediate effect*, by virtue of Article 4 (2) of the CRPD.

To perceive in a different way, the characterizing elements of the application of Article 53 of the CFREU are clear. On the one hand, in the application of fundamental rights, (i) the provisions of the CFREU cannot restrict or undermine the fundamental rights enshrined in the CRPD, (ii) the interpretative efficacy of the CFREU should take into account the provisions of the CRPD under the *pro homine* clause approach.

On the other hand, within the scope of European Union law in general (i) acts adopted by the institutions of the European Union and by the Member States when applying European Union law may not condition or reduce the level of protection of the rights conferred by the Convention and by the Charter as a whole (ii) it is admissible if any act adopted by the institutions of the European Union and by the Member States when implementing European Union law is in a position to make more effective, in terms of its content, in cases covered by European Union law, the catalogue of rights enshrined in the Charter and also the Convention, under the *pro homine* clause approach.

For the scope of the rights of persons with disabilities, Article 53 is intended to preserve the current and up-to-date level of protection conferred between the CRPD and the CFREU by the Member States when European Union law is applied, taking into account the level of protection complementing the CFREU and CRPD as a European parameter of fundamentality. Moreover, if they do not apply European Union law, Member States are obliged to act in accordance with the CRPD in the national scope of application, since the Member States are also parties to the Convention.

The pluralism of the respective spheres of application of protection of fundamental rights, according to Article 53 of the CFREU, is intended to make the CFREU the complementary and additional instrument – non-reductive or substitute – for the protection of the rights recognized in the Charter and the CRPD at the European level of application. It transposes that the institutions of the European Union, on the one hand, and the Member States, when implementing European Union law, on the other, are obliged to act in accordance with the European standard of fundamentality conferred by the CFREU and the CRPD, in accordance with their respective competences as laid down in Council Decision 2010/48.

It means that the application of the provisions of the Convention by the institutions of the European Union and the Member States when they apply European Union law takes into account the limits and conditions laid down in the Treaties, in particular, their respective competences previously established in accordance with the Treaties and in particular, Council Decision 2010/48.

The CRPD and CFREU specify in the framework of the coexistence of sources of protection of the fundamental rights of persons with disabilities, that this can lead to a complementary level of protection, to the detriment of the reduction or replacement, of these rights within the scope of European Union law. Thus, the CRPD itself, in its Article 4 (4) and the CFREU in its Article 53, may have the effect of requiring the European Union institutions themselves and the Member States, when they apply European Union law – to provide the level of protection of fundamental rights

guaranteed by the CRPD in cases falling within the scope of European Union law.

The the CRPD is, thus, seen as a “brake-mechanism” for reducing the protection of the fundamental rights of persons with disabilities in their respective fields of application, on the one hand, in cases covered by European Union law and, on the other, in cases not covered by EU law by Member States, but are required to act in accordance with the provisions of the Convention in the context of the application of national law.

III. Conclusions

From all of the above, we believe it is possible to draw some fundamental conclusions:

a) It is the first time that the European Union, as a regional integration organization under the terms of Article 44 of the CRPD, ratifies the Convention which is binding in the legal order of the European Union.

b) Article 53 of the CFREU indicates that the provisions of the CFREU cannot restrict or impair the rights protected by the CRPD within its scope. Thus, the catalogue of rights protected by the Convention is inherently an integral part of the European Union’s fundamental legal order, which is fully applicable for the purpose of interpreting the fundamental rules of the CFREU. The CFREU does not exclude the CRPD which is binding in the legal order of the European Union.

c) Article 53 of the CFREU does not consider the hierarchical question of making a source of law prevail over or replacing another, but imposes an *interactive compatibility* of the scope and meaning of fundamental rights – in addition to a formal perspective in itself - for the primacy of effectiveness of the protection of fundamental rights mutually protected in the CRPD and CFREU.

d) The CRPD plays a key role in revealing the meaning and scope of the CFREU, with specific (or better adapted) content. The interpretative efficacy of the CFREU is updated by means of a catalogue of rights protected by the CRPD to proceed with a detailed, diverse and complete legal treatment, so it should not be surprising that the CRPD’s catalogue of fundamental rights completes that of the CFREU.

e) The fundamentality parameter states in the framework of updating and implementing the CFREU’s fundamental rules, based on the CRPD itself, coexisting horizontally to ensure, with the use of the *pro homine* clause, the highest level of protection of the catalogue of fundamental rights of persons with disabilities.

f) Articles 53 of the CFREU and 4 of the CRPD are, in terms of their content, complementary in the context of the positive application of the rights of persons with disabilities in the legal order of the European Union itself. Consequently, the catalogue of rights protected by the CRPD is also considered by the CFREU to complete the meaning and scope of fundamental rights.

g) It is essential to assume that, within the scope of European Union law, the acts of the institutions of the European Union and of the Member States when implementing European Union law must be in conformity with the Convention, which is seen as a European parameter of fundamentality of disabled people, alongside the CFREU supplemented by the CRPD.

h) The principle of the primacy of European Union law is that the Convention itself is an integral part of the legal order of the European Union and prevails over secondary legislation of the European Union, and the provisions of the Convention

are, for that purpose, directly applicable in a complementary, and reinforced form, to the catalogue of rights recognized by CFREU, within the scope of the powers reserved to the European Union.

i) Acts adopted by the institutions of the European Union and by Member States when applying European Union law may in no circumstances derogate from the provisions of the Convention which are directly binding on the European Union.

j) Respect and compliance with the Convention is a guarantee of the principle of the rule of law of the European Union. The settled case-law of the CJEU has been to confirm the Convention as an integral part of the legal order of the European Union.

k) The role of the CJEU is essential in order to safeguard – with a view to strengthening its protection – the fundamental rights recognized by the Convention in the legal order of the European Union.

l) From the point of view of Article 53 of CFREU, for this study, the catalogue of the rights recognized by the Charter enshrines the point of view of its content, a *minimum standard* and, second, the catalogue of rights protected by the CRPD devotes a *complementary and reinforcing standard* of the catalogue of CFREU rights, in the context of the application of European Union law.

m) The application of the Convention ensures, as a mechanism, the level of protection conferred by the CFREU on the rights of persons with disabilities, which can not infringe or reduce the catalogue of rights enshrined in the Convention in the legal order of the European Union. The Compass of Article 53 of the CFREU, in concert with other Articles, aims to apply the *highest level of protection* of fundamental rights, finding a *more effective standard* – not a less effective or reductive standard – of protecting the rights of persons with disabilities, which is the catalogue of rights protected by the Convention as an integral part of the legal order of the European Union.

n) The application of Article 53 of the CFREU can be read taking into account – not to be understood as incompatibility but rather complementarity – the framework of the principle of the primacy of European Union law, since the Convention itself is an integral part of the Union's legal order and is considered the common denominator of the protection of fundamental rights, which is seen as a general principle of the European Union's action to combat discrimination on grounds of disability.

o) The application of the provisions of the Convention may be deployed in the case of the validity of European Union law and, in the case of the interpretative efficacy of the CFREU, on the fundamental rights of persons with disabilities, under the *pro homine* clause in the context of the highest level of protection.