

# **1.- Current challenges for a Changing Europe: a social and legal perspective**

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## Current challenges for a Changing Europe: a social and legal perspective

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**Abstract:** From the point of view of Law and Social Sciences, actual challenges in European Union are defined by the current economic and social crisis, most of them linked to fundamental rights protection, social dimension and European integration identity.

As we know, European integration is an economic, social, political and legal process where EU Member States, EU institutions, and European citizens are principal actors.

It's very important to identify the actual problems, to balance social and economic dimensions of EU integration and to identify clearly the European Union's identity.

**Key words:** EU challenges, social and economic dimensions, EU's identity

**Summary:** 1.- INTRODUCTION. 2.- FUNDAMENTAL RIGHTS PROTECTION IN MULTILEVEL SYSTEM: SEARCHING THE HIGHEST LEVEL OF PROTECTION. 3.- BIBLIOGRAPHY.

### 1. INTRODUCTION. APPROACH AND METHODOLOGY

From the point of view of Law and Social Science actual challenges in European Union are defined by the current economic and social crisis, most of them linked to fundamental rights protection and European integration identity.

As we know, European integration is an economic, social, political and legal process where EU Member States, EU institutions, and European citizens are the principal actors.

It's very important to identify the actual problems, to balance social and economic dimensions of EU integration and to identify clearly the European Union's identity.

In this sense, we must study how economic, social, political and legal elements of EU integration process are affected by the actual crisis. Of course, the balance between social and economic dimensions is the key question linked to EU integration identity.

As we define EU integration as a process with a double dimension, an economic one and a social one, we must balance these two dimensions looking for a good balance, the best possible balance, a proportional one, and always using political and legal instruments with respect to fundamental rights.

We think that the best instrument to do it is a multidisciplinary approach, making attention to different challenges, and the connection points between them.

This book is the result of a young researchers workshop dedicated to *Current challenges for a Changing Europe*, as a great opportunity to meet and exchange views between researchers from different perspectives.

Therefore, this research work consist in two parts, Part I referred to Social Challenges for Europe, and Part II to Law perspective for Europe, always in relation to actual social and economic crisis.

The papers included in the book are different and we think they include most problematic actual issues in European studies: migration population's evolution in Spain during the crisis, the question of freedom of religion and employment relationship, the sam-sex union's relation in Italy, the challenge of employment within a social Europe, Nneuroeconomics and neuromakerting, a study about standard procedure for detecting child vulnerability at European schools, EU identity, the right to strike in Europe, Federalism in Europe, protection of social rights, dispute resolution in Europe, relevant case law studies, questions of property, neuropolitics, and politic studies.

From the law perspective, we think it is necessary to identificate the way in which the multilevel rights constitutionalism approach can contribute to consolidate the standard of protection, the best or highest standard of protection, in times of economic and social crisis. Democracy and social dimension of EU integration process demands that fundamental rights standard may limit the discretion of public authorities in the framework of a good governance.

Therefore, it is always necessary to look for new criteria to guarantee the maximum or highest standard of fundamental rights protection (EU, Human Rights Convection or constitutional level one).

## **2. FUNDAMENTAL RIGHTS PROTECTION IN MULTILEVEL SYSTEM: SEARCHING THE HIGHEST LEVEL OF PROTECTION**

As we know, in Europe we live in a context with different legal systems interconnected between them (specially constitutional, EU, and Council of Europe) and we must identify the best criteria to connect and interpret the relations between these legal systems. Multilevel constitutionalism is a good instrument to do it (Gómez Sánchez, 2011)

In this sense, multilevel constitutionalism allows to understand better the relations between different levels of fundamental rights protection in Europe. And maybe we can think that after Lisbon Treaty with the acquisition of legal force by the EU Charter of Fundamental Rights (art. 6.1 EUT) multilevel constitutionalism is also the correct instrument to do so.

In relation of scope and interpretation of rights and principles, article 52 of the Charter, stipulates that when the Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), “the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection” (article 52.3 Charter); and when the Charter recognizes rights resulting of common constitutional traditions of Member States, these rights must be interpreted in harmony with them (article 52.4 Charter) (Mangas Martín, 2008: 826-850)

In these two paragraphs the art. 52 is establishing the link between the rights enshrined in the Charter with the ECHR and common constitutional traditions in Member States, which are the sources of fundamental rights recognized by the Court of Justice as general principles of Community Law.

The reason of this provision is to exclude any kind of conflict between fundamental rights protection standards. So we can understand that art. 53 provides a limitation on the scope of applicability of the Charter, to prevent a lesser level fundamental rights protection. In this sense, it is equivalent to ask for the highest fundamental rights protection standard of as a "principle of non-regression".

This would mean that the Charter only produces legal effects to Member States if they do not guarantee a higher level of protection, in which case the Charter should be applied (Ridola, 2002: 92), or “should make utterly clear that the Community rights should be interpreted, in line with national constitutional traditions, in such a way as to offer a high standard of protection” (Giubboni, 2003: 15)

In this sense we think that the Charter should be interpreted as a instrument to apply the highest standard of protection of fundamental rights between ECHD standard, national standard and Charter standard (Sarrión Esteve, 2013: 96), contrary to what ECJ seems to interpret in the recent case *Melloni*, C-399/11.

So, when EU institutions and EU member states apply any measure in the actual crisis, we think they must respect fundamental rights, any fundamental rights, including social ones, with the perspective of the highest standard (constitutional, EU, or European Human Rights Convention)

Off course a correct analysis of balance between economic and social dimension require that we identify social fundamental rights, and the level of protection of them, the highest level of any social right affected by the measure. And this operation is very difficult because requires a constitutional, EU law and European Human Rights Convention study of the right, comparing different levels and the identification of the highest level to apply it to the measure analyzed.

But we think that in this context we need to do it to search the best balance between economic and social dimension of EU integration process. Nevertheless, without one of them EU will not be EU, it will be another thing, another process with other fundamental and principal characteristics.

EU institutions and EU Member States should respect fundamental rights highest standard. In this context the play of European Court of Justice, Constitutional Courts, and European Human Rights Court is essential.

On one hand, as we know, Constitutional Courts have not accepted peacefully the primacy of Community law over national law, especially constitutional law, and in particular fundamental rights constitutional protection. This is evident, and paradigmatic in the case of German or Italian Courts and other Constitutional Courts (Sarrión Esteve, 2011)

On the other hand, European Human Rights Court confirmed fundamental rights protection in European Union as equivalent to European Human Rights Convention one (EHRC 30 June 2005, *Bosphorus*).

Anyway, we believe that fundamental rights protection, specially social rights one, in the European Union, underline problems of a multilevel system, which should always be solved through an inter-jurisdictional dialogue, but this “dialogue” would be easier and better with the respect to the highest fundamental rights protection standard, what is more, with a perspective of European Union’s accession to the ECHR. Definitely, a better balance looking for the highest protection standard is possible.

Without this criteria, we think that the future relation between ECJ and Constitutional Courts, and may be EHRC could be difficult.

Social dimension is a essential part of EU integration identity and we must respect if as we must respect economic one. The balance is possible, but we must search the better measures to fight against the actual crisis with the respect to fundamental rights and applying the criteria of the highest fundamental rights protection standard.

### 3. BIBLIOGRAPHY.

GÓMEZ SÁNCHEZ, Y. (2011). *Constitucionalismo Multinivel. Derechos Fundamentales*, Sanz y Torres, Madrid.

MANGAS MARTIN, A. (2008): “Artículo 52. Alcance e interpretación de los derechos y principios”, en MANGAS MARTÍN, A. (dir), *Carta de los Derechos Fundamentales de la Unión Europea. Comentario artículo por artículo*, Fundación BBVA, Bilbao, pg. 826-850.

RIDOLA, P. (2002): *La Carta dei diritti fondamentali dell’Unione Europea e la “tradizioni costituzionali comuni” degli Stati membri*, en PANUNZIO, S.P. y SCISO, E., *Le riforme istituzionali e la partecipazione dell’Italia all’Unione europea*, Giuffrè, Luiss Edizioni, Milán.

GIUBBONI, S. (2003): “Fundamental social rights in the European Union: Problems of protection and enforcement”, Second Expert Workshop Co-operation or Confrontation? Toward the Effectiveness of International Law, Conference Centre of the Catholic Academy, Berlin, [[http://www.sef-bonn.org/download/veranstaltungen/2003/2003\\_fachws\\_referat-giubboni\\_en.pdf](http://www.sef-bonn.org/download/veranstaltungen/2003/2003_fachws_referat-giubboni_en.pdf)]

SARRIÓN ESTEVE, J. (2011): “En búsqueda de los límites constitucionales a la integración europea”, *CEFLegal: revista práctica de derecho*, 31, pp. 81-142.

\_\_\_\_\_, (2013): *El Tribunal de Justicia de Luxemburgo como garante de los derechos fundamentales*, Dykinson, Madrid.

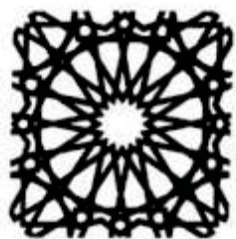
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COMARES

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