



# FUNDAMENTAL RIGHTS IN MULTI-LEVEL LEGAL SYSTEMS: RECENT DEVELOPMENTS IN EUROPEAN HUMAN RIGHTS PRACTICE

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## I. INTRODUCTION

As long as the European Union (EU) Constitution Treaty is not in force, the interaction between courts within the European System still remains a challenge. However, it is not only the relationship between the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ) which raises questions. The role which national states have to play in a world of globalisation and international constitutionalism<sup>1</sup> seems more and more important. Many State acts are performed in compliance with international regulations and therefore often without discretion. Delegation of sovereign rights from states to supra-national organisations like the EU or international organisations like the World Trade Organisation (WTO) causes new interrelations and fragmentation in international law.<sup>2</sup> As a consequence, the legislation of these institutions affects each other and often individuals are the real addressees of adopted decisions. Particularly when it comes to human rights interferences, individuals are often without a remedy at all or—if available—the proper judicial institution remains uncertain.

The sanction regime by the United Nations (UN) Security Council exposes this assumption particularly well: Going from the general to the particular, the Council acts visibly in some disputes as a ‘world legislature’.<sup>3</sup> The adoption of the resolution 1267 for example imposes, *inter alia*, upon member states to freeze the assets of persons suspected of being involved in terrorist activity. At international level, affected persons cannot invoke the International Court of Justice (ICJ) to assess the lawfulness of this act.<sup>4</sup> At regional level, like the European Community (EC), UN resolutions dealing with economic sanctions are implemented by EC Regulations and therefore individuals could call on the ECtHR or ECJ. While the access to the latter is very re-

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<sup>1</sup> See, e.g., L. Wildhaber, *A Constitutional Future for the European Court of Human Rights*, 23 HRLJ (2002), p. 161; D. Chalmers et al. (ed.), *EUROPEAN UNION LAW* (2006), chapter 2, p. 44 et seq.; J.P. Trachtman, *The Constitutions of the WTO*, 17 EJIL 2006, p. 623; A. Peters, *Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures*, 19 LJIL (2006), p. 579.

<sup>2</sup> See Report of the Study Group of International Law, ‘Fragmentation of international law’, UN Doc. A/CN.4/L.682, 16 April 2006. See for the WTO & EC Relationship: S. Peers, *Fundamental Right or Political Whim? WTO Law and the European Court of Justice*, in G. de Búrca & J. Scott, *THE EU AND THE WTO* (2003), p. 111; see further Cases: C-149/96, Portugal v. Council; C-392/98 Christian Dior and Lhayher; C-111/99 Léon van Parys. All Judgements of the ECJ and Court of First Instance (CFI) are available at <http://curia.europa.eu/>.

<sup>3</sup> See S. Talmon, *The Security Council as World Legislature*, 99 AJIL (2005), p. 175.

<sup>4</sup> Art. 34 ICJ Statute.