



# The Evolution of Democratic Principles in the EU Legal Order

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# Summary

- 1. Introductory remarks**
- 2. The Constitutional Nature of the Communities**
- 3. The Democratic Principle in the Community-Union Construction**
- 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:**
  - a) The cornerstone principles of economic freedoms***
  - b) The general principles of the Community system and the protection of fundamental rights***
  - c) The fundamental or founding principles of the Union***
  - d) The principles of democratic representativeness and participation***
- 5. Conclusions.**

# 1. Introductory remarks

- **the debate on democratic principles as the foundation of the European Union** began with the abandoned Constitutional Treaty of Rome and then with the Lisbon Treaty
- the Union's constitutionalisation-democratization process dates back to European integration: **principles common to the Member States**
- These principles partly were included into **the general principles of Community law**, some other partly became **constitutional or constitutive or founding principles of the Union**
- “The cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law (Preamble TEU)
- Only the Constitutional Treaty (**Title VI, The democratic life of the Union**) and the Lisbon Treaty (**Title II, Provisions on democratic principles**) refer to democratic principles in the strict sense

## 2. The Constitutional Nature of the Communities

- The **Community Treaties** were considered to be constitutional in nature
- Through the integration of the peoples and states of Europe, **they wanted to carry out a deep political and social restructuring**
- The goal was **the transformation of democratic societies for a common European future**
- **The Court of Justice defined the then Treaty of Rome as a basic constitutional charter**, or as different from the common international treaties. It was able to establish its own legal system integrated into the legal systems of the Member States and, moreover, **the EEC was a community of law** (Judgment of the Court of 5 February 1963, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*; Judgment of the Court of 23 April 1986, *Parti écologiste "Les Verts" v European Parliament*)

### 3. The Democratic Principle in the Community-Union Construction

- An illusory operation
- Unity of the EU system and Diversity of national systems
- The **democratic integration of the States and Peoples of Europe**
- the European Union has developed in accordance with or in compliance with a democratic principle understood in a broad sense as it was originally a **general process of democratization of relations between the states and peoples of Europe through the creation of a common legal order**
- the **aims of peace and common well-being** were underlying the institutional treaties of the EEC

## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### a) *The cornerstone principles of economic freedoms*

- Freedoms and fundamental rights guaranteed by the EU, initially only by case-law.
- Recognition of a status of economic rights and duties in compliance with two well-known **principles of non-discrimination based on nationality and mutual recognition**
- These principles then **informed the entire community action** thanks to the Court of Justice

## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### *b) The general principles of the Community system and the protection of fundamental rights*

The Court of Justice had excluded the effectiveness of the constitutional rules of the Member States in the Community system (Judgment of the Court of 4 February 1959, *Friedrich Stork & Cie v High Authority of the European Coal and Steel Community*, Case 1/58; Judgment of the Court of 15 July 1960, *Präsident Ruhrkolen-Verkaufsgesellschaft mbH, Geitling Ruhrkohlen-Verkaufsgesellschaft mbH, Mausegatt Ruhrkohlen-Verkaufsgesellschaft mbH and I. Nold KG v High Authority of the European Coal and Steel Community*, Joined cases 36, 37, 38-59 and 40-59)

## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### *b) The general principles of the Community system and the protection of fundamental rights*

- The Court of Justice elaborated the well-known jurisprudential source of the general principles of Community law, thus affirming the protection of fundamental rights also in the Union legal system (Judgment of the Court of 12 November 1969, *Erich Stauder v City of Ulm - Sozialamt*, Case 29-69)
- "Respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community" (Judgment of the Court of 12 November 1969, *Erich Stauder v City of Ulm - Sozialamt*, Case 29-69)



## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### *b) The general principles of the Community system and the protection of fundamental rights*

“... fundamental rights form an integral part of the general principles of the law, the observance of which it ensures; that in safeguarding those rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, so that measures which are incompatible with the fundamental rights recognized by the constitutions of those States are unacceptable in the Community; and that, similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law. That conception was later recognized by the joint declaration of the European Parliament, the Council and the Commission of 5 April 1977, which, after recalling the case-law of the Court, refers on the one hand **to the rights guaranteed by the constitutions of the Member States and on the other hand to the European Convention for the Protection of Human Rights and Fundamental Freedoms** of 4 November 1950 (Judgment of the Court of 13 December 1979, Liselotte Hauer v Land Rheinland-Pfalz, Case 44/79). See also Judgment of 14 May 1974, *Nold* [1974] ECR 491

## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### *b) The general principles of the Community system and the protection of fundamental rights*

Treaty of Maastricht

#### Article F TEU

1. The Union shall respect **the national identities of its Member States, whose systems of government are founded on the principles of democracy.**
2. **The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.**
3. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies

## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### *b) The general principles of the Community system and the protection of fundamental rights*

Treaty of Maastricht

#### Article 8 TEC

1. **Citizenship** of the Union is hereby established.

Every person holding the nationality of a Member State shall be a citizen of the Union.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby

## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### *c) The fundamental or founding principles of the Union*

#### Treaty of Amsterdam

- The former article F, now article 6 TEU, provides in the new paragraph 1 that: **"The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States"**
- **Mechanism of safeguard** in the case of the existence of a serious and persistent breach by a Member State of principles mentioned (Article F.1. TEU, then Article 7 TEU)
- **"Any European State which respects the principles set out in Article F(1) may apply to become a member of the Union"** (Article O)

## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### *d) The principles of democratic representativeness and participation*

- a deficit of representativeness and democratic participation of citizens in European political life
- "active" European democracy regime
- Treaty of Lisbon: Title II *Provisions on Democratic Principles* – Articles 9-12 TEU

#### Article 9 TEU

In all its activities, the Union shall observe **the principle of the equality of its citizens**, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### *d) The principles of democratic representativeness and participation*

Article 10 TEU

1. The functioning of the Union shall be founded on **representative democracy**.
2. **Citizens are directly represented at Union level in the European Parliament.**

**Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments**, themselves democratically accountable either to their national Parliaments, or to their citizens.

3. Every citizen shall have **the right to participate in the democratic life** of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.
4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.

## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### *d) The principles of democratic representativeness and participation*

- multi-representation
- different interests coexisting in the Union (art. 13 TEU: “The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, **serve its interests, those of its citizens and those of the Member States**, and ensure the consistency, effectiveness and continuity of its policies and actions”)
- direct representativeness of citizens in the European Parliament (“in the legislative process of the Community. Such power represents an essential factor in the institutional balance intended by the Treaty. Although limited, it reflects at Community level **the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly**”, Judgment of the Court of 29 October 1980, *SA Roquette Frères v Council of the European Communities*, Case 138/79)
- Article 14 TEU “The European Parliament shall be composed of **representatives of the Union's citizens**”

## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### *d) The principles of democratic representativeness and participation*

- Article 15(2) TEU "The European Council shall consist of **the Heads of State or Government of the Member States**, together with its President and the President of the Commission"
- Article 16(2) TEU "The Council shall consist of **a representative of each Member State at ministerial level**, who may commit the government of the Member State in question and cast its vote"
- Article 10(2) TEU "Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves **democratically accountable either to their national Parliaments, or to their citizens**"
- **democracy shared by the interaction of the various institutional levels**



## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### *d) The principles of democratic representativeness and participation*

- Article 10 (2) TEU “Every citizen shall have **the right to participate in the democratic life** of the Union. Decisions shall be taken as openly and as closely as possible to the citizen”.
- What are the forms of active participation of EU citizens?
- **The European Citizens’ Initiative** (ECI, Article 11(4), TEU)
- Democratic participation as a kind of **"right of access" to decision-making processes recognized to citizens in compliance with the principles of transparency and subsidiarity** in its meaning of institutional proximity.

## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### *d) The principles of democratic representativeness and participation*

- **interinstitutional balance of powers**
- **development of general mechanisms of openness and transparency of works and acts of the institutions and bodies**
- **strengthening of dialogue and communication of civil society (see the 2001 European Commission's White Paper on European Governance)**
- **a democratic form of government which finds its consensus in the informed European civil society**

## 4. The Progressive Affirmation of Democratic Principles in the EU Legal Order:

### *d) The principles of democratic representativeness and participation*

#### Article 11 TEU

1. The institutions shall, by appropriate means, give citizens and representative associations **the opportunity to make known and publicly exchange their views in all areas of Union action.**
2. The institutions shall maintain an **open, transparent and regular dialogue** with representative associations and civil society.
3. The European Commission shall carry out **broad consultations with parties** concerned in order to ensure that the Union's actions are coherent and transparent.
4. Not less than one million citizens who are nationals of a significant number of Member States may take the **initiative of inviting the European Commission**, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union.

## 5. Conclusions

- The role of the EUCJ
- fundamental principles of the EU
- democratic principles (Title II of the reformed Treaty on European Union)
- Democracy in the European Union was conceived as **dual democracy** for the contribution of national constitutional laws, as well as for the role of national parliaments pursuant to art. 12 TEU
- Common constitutional traditions initially translated **the common law of the Member States** as a product of the comparison of their national legal systems. They then moved to represent the **safeguarding factor of the identity and diversity of national legal systems** (art. 4 TEU)

- national constitutional identities strongly claimed in the last decade have produced a **"dis-integration" effect**
- **Some EU Member States do not respect democratic principles, in particular the rule of law** that is one of the fundamental values of the Union, enshrined in Article 2 TEU and a prerequisite for the protection of all the other fundamental values of the Union, including for fundamental rights and democracy
- Poland and Hungary have not realigned with the EU's founding values
- “The failure by the Council to make effective use of Article 7 continues to undermine the integrity of common European values, mutual trust and the credibility of the European Union as a whole”, claims the EP”
- Call for an EU permanent mechanism on democracy, rule of law and fundamental rights