1 The Protection of Vulnerable People within the Framework of International Human Rights Law and of European Union Law: Origins and Evolution

This chapter addresses a very broad topic, namely on-going developments in the protection of vulnerable groups under the Charter of Fundamental Rights of the European Union (CFREU). Therefore, we will limit ourselves to highlight some features that characterize these developments.

The origins of the Charter Articles dedicated to children, elderly people and persons with disabilities are rooted in the beginning of the legal protection that the EU system has built up with respect to fundamental rights. The CFREU has codified and extended the set of rights elaborated by the case law of the Court of Justice of the European Union (ECJ) since 1969. Though the Charter long remained without legally binding effects, the ECJ had begun to refer to the Charter in its judgements even before the entry into force of the Lisbon Treaty, as a tool for consolidating existing human rights.¹ This “has cre-
ated an aura of legality around the document”. In the case law of the Court, it was making clear the idea that the Charter was a “privileged instrument for identifying fundamental rights” which was recognized as general principles.

Even a cursory look at the CFREU will reveal that it draws upon not only the constitutional traditions common to the EU Member States but also a number of international human rights instruments. These instruments have influenced the development of fundamental rights as general principles of European Union law, as well as the drafting history of the Charter. In this regard, as emerged by the explanations to the Charter, the European Convention on Human Rights (ECHR) and the European Social Charter (ESC) have played a much more important role than the other human rights instruments.

In particular, regarding international law, in recent decades various international obligations have been imposed upon States to strengthen human rights and, more specifically, the principles of equality and non-discrimination. Provisions on equality and non-discrimination are embedded in many universal and regional human rights treaties. Briefly, we would like to mention in this respect the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and, for the regional level, the European Convention on Human Rights (ECHR) and the European Social Charter. In addition, beyond gen-


3 In this regard, the Opinions of the Advocates-General of the Court, which represented a kind of forerunner for subsequent jurisprudence, were significant. We may recall, inter alia, the Opinions of Advocate-General Lager of 10th July 2001 (Case C-353/99, para. 80) and of Advocate-General Tizzano of 8th February 2001 (Case C-173/99, para. 27).