

# THE PROTECTION OF THE FAMILY IN THE EUROPEAN LAW

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**ABSTRACT:** *This paper will examine the legal framework regarding family protection in the European Union (EU), focusing on legislative developments, decisions of the Court of Justice of the European Union (CJEU), and emerging challenges.*

*Through this analysis, the article seeks to provide a clear perspective on the protection of family rights within the context of European integration and underscore the importance of a harmonized approach in this regard.*

*The family, as a fundamental nucleus of society, lies at the heart of European Union concerns. While European integration has led to increased interconnection among nations, the diversity of national family law regulations has created a need for coherence and uniformity to ensure effective protection of family rights.*

*The rise in mobility within the EU has made it imperative to address the issue of mutual recognition of family law decisions. Directive 2003/88/EC has been crucial in facilitating the cross-border recognition of matrimonial and parental responsibility judgments, thereby contributing to creating a legal environment that promotes the free movement of people without compromising family protection.*

**KEYWORDS:** *Protection, European Union, Family, Charter Of Fundamental Rights*

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## 1. INTRODUCTION

The European Union has recognized the importance of the family as a primary social structure, committing itself to protect the right to birth and the preservation of family relationships. The protection of family status by the EU is a consequence of the impact of policies and community freedoms on the social-economic and legal reality of European families. The cooperation between community norms and family law is emphasized in the provisions related to the right of free movement of persons, which give the right to stay in a host country to family members of migrant workers and at the same time underlines a community definition of the family. The community right of the family is not exhausted in an indirect protection of the status of the family, as a result of the creation of the internal community market.

Although the material right of the family is excluded from harmonization or community unification, the entry into force of European citizenship, the creation of a space of freedom, security and justice, the increase in the values of the protection of fundamental rights, expand the influence of the right to of the EU in the field of family law.

Community jurisprudence seems to be directed to instrumentalize the basic principles of the internal market, with the objective of protecting the family status. It should be emphasized that the community law of family ties cannot completely replace the substantive family law of the member states, both in terms of the limits set by the attribution of responsibility, subsidiarity and proportionality, as well as the conflicting nature of the discipline in question.

In community law, family status is somehow a prerequisite for the enjoyment of subjective rights of community origin (Marella, 2005); for this reason, the definition of the family in Community and EU law acquires an essential value, since even when the family is taken as the direct object of protection by the EU, the question always arises as to the subjects that benefit from this protection.

## 2. METHODOLOGY

The present paper will be based on the qualitative methodology, recovery data from different texts, interpretation of literature. It will be based on the theoretical knowledge, creating a picture regarding the selection of the right methodology, the qualitative one. In this paper we are divided the literature into theoretical and empirical, based on what we have obtained from the Library of European University of Tirana, Faculty of Law, and from the various journals, international and national ones.

### 3. DISCUSSION

The definition given to the term "family" in the context of European Union law, nowadays must also face the pluralism of family models. The social development in the first place, and then the legal one, lead to a deinstitutionalization of marriage and the privatization of family ties, producing new models of coexistence.

These new typologies of families have made it possible for the member states to implement/guarantee forms of institutionalization for the new relationships, thus not creating inequality or discrimination both from the social and economic side, between the traditional family and the new family typologies. For this reason, there is a need to verify the protection of family status, if this protection corresponds to today's pluralism of the concept of family, and in particular if it guarantees a full protection of family relations in situations of international movement, which the EU treaty -'s intended to protect. The content of the fundamental rights guaranteed by the EU are structured on the basis of common constitutional traditions of member states and international treaties. Regarding the protection of human rights, where the member states have cooperated and have become part.

According to the Court of Justice, not only community institutions, but also member states must respect the fundamental rights guaranteed within the EU, both when they act in the application of community law and when they make an exception in the application of the right of free movement of persons, based on reasons of general interest provided by the EU treaty. Apart from these hypotheses, the acts and activities of the member states are not subject to the control of compatibility with the basic community rights.

Article 6 of the Treaty on the Functioning of the EU has sanctioned the respect by the EU of the fundamental rights guaranteed by the ECHR and by the constitutional traditions of the member states, as they constitute general principles of community law itself. The provisions of the Charter of Fundamental Rights regarding family law, even though they are inspired by articles 8 and 12 of the ECHR, differ from the latter in some specific aspects. This fact leads to the necessity of examining the coordination between the Charter and the ECHR system.

The relationship between the Charter of Fundamental Rights and the jurisprudence of the European Court of Human Rights is not underlined in any provision of the Charter, although interpretive divergences between the latter cannot be excluded.

Article 7 of the Charter of Fundamental Rights expressly sanctions: "Every individual has the right to respect for his private and family life, his home and receiving notifications". This provision reproduces textually Article 8 of the ECHR and sanctions a right that corresponds to that of the convention; as a result, the applicability of Article 8 paragraph 2 ECHR accepts an intervention by political authorities in the application of this right, when provided by law and when it is necessary in a democratic society in terms of national security, public safety, economic well-being of the country, the protection of public safety and the prevention of criminal offenses, the protection of health or morals, or the protection of the rights of freedom of third parties.

In this way, it is possible to limit the exercise of family law on the basis of a general clause of Article 52, according to which "rights can be limited where it is necessary and when this limitation effectively responds to an interest general recognized by the European Union, or from the need to protect a right of third parties".

Respect for family law, originally part of a single article of the Family Protection Charter, has been separated from the right to marry and, in accordance with the ECHR, has been linked to the right to respect for family life, underlining thus a wider guarantee of individual autonomy. The protected subjects are the family members, and not the family as a whole, thus remaining coherent in the current "privatization" of family relations.

The obligation to respect family life sanctioned by Article 8 of the ECHR, negatively obliges the member states, as the Strasbourg Court points out, not to interfere in the family life of individuals, but also the positive obligation to adopt adequate measures to allow the development of a normal family life, protecting it from external attacks, but at the same time from the attacks of other private entities. In this sense, the ECJ in the decision *Marckx vs. Belgium*<sup>1</sup> was called upon to verify whether Belgian legislation complied with Article 8 of the ECHR in two different profiles, both in the form provided by domestic legislation for the maternal relationship between a daughter and an unmarried mother, and in terms of the concrete relationship in law between a child legitimate and mother's family members. Regarding the first profile, the court emphasized that the Belgian legislation violates both Article 8 of the Convention and Article 14 thereof. Among other things, considering that the recognition of the daughter would bring limitations for the mother in the transfer of her property to the daughter, the Belgian legislation is in complete contradiction with Article 8 of the Convention.

The court further emphasizes that Article 8 of the ECHR guarantees respect for family life, without establishing any point of difference between the so-called legitimate and illegitimate family. We find a reinforcement of this assertion by the court in Article 14 of the convention, which sanctions an enjoyment of the freedoms and rights established by the convention itself, prohibiting discrimination based on birth itself.

The notion of "family life", based on Article 7 of the Charter, should also be recognized based on the relative jurisprudence of Article 8 ECHR, which by applying the principle of non-discrimination in the enjoyment of rights and freedoms, guarantees at the same time and the protection of a wider family typology than the marital one. In this way, the ECtHR recognizes the existence of different typologies of the family but recognizing the member states' right to grant different forms of protection. Among other things, the Court and the European Commission of Human Rights assert that even polygamous unions constitute "family life", but they consider it right to deny the right of entry or residence to member states, in relation to some family cases, since this denial is justified based on Article 8 paragraph 2 of the ECHR.

#### 4. CONCLUSIONS

The provisions of the Charter of Fundamental Rights in terms of family law, confirm the community jurisprudence, which has listed the respect for family life among the fundamental rights, since being general principles of community norms, they must be guaranteed within of the structure and goals of the community. The principles related to the recognition of family statuses and the right to preserve family relations within the framework of free movement can and should come to the rescue whenever the quality of "family member" constitutes a precondition for the definition of subjective rights of community origin, to guarantee the EU citizen's right to see his status, qualified as "family" in the legislation of a member state, recognized both by community institutions and by other states. Each state is free to decide the legal situations in which to give the definition of "family member", but it remains obliged anyway, since it constitutes the destination state for those who exercise the right of free

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<sup>1</sup> Decision June 13, 1979, Series A no. 31, point 31: Paula Marckx, an unmarried Belgian citizen, registered with the registrar in Vilrijk the birth of her daughter Aleksandra, as provided by article 57 of the Belgian Civil Code for the recognition of natural children, asking the judge to proceed with the acquaintance of the girl. Marckx gets to know her daughter Aleksandra, but only by winning the Ntulli of her guardian, and not of her mother. In order to strengthen her legal position vis-à-vis her daughter, she was forced to carry out her adoption, based on Article 349 of the Civil Code. But Belgian law provided that the adopted child simply acquired the status of a legitimate child, but not the rights of inheritance. In this way, Paula Marckx addressed the ECtHR, emphasizing not only the discrimination made by the Belgian state between natural and legitimate children, but also the different treatment in terms of inheritance rights.

movement, define the definition of the term "family" in terms of community law, giving importance not only to the status of the family according to domestic law, but also to those legally connected in other member states. Within the framework of all the freedoms and rights that characterize the single European market, the free movement of persons is the first instrument in chronological order that has allowed the European Community to take an interest in family law. From the first applications, the EU institutions were very clear about the fact that the right to work and the right to free movement within the European space were closely related to the right of individuals to include in this right also their family members, the passive subjects of the right of free movement, regardless of the nationality of the latter, i.e. regardless of whether they were EU or non EU citizens.

Today, as far as community citizens and their family members are concerned, it is directive 38/2004 that establishes the contours and limits of the right to free movement of community citizens' family members, defining at the same time, in its article 2, what understood by family and who benefits from this right.

In contrast, as far as non-EU citizens are concerned, it is directive 86/2003 that defines the contours and the right of family reunification of the latter, thus eliminating any eventual discrimination. The competences of the European Union, which refer to social policy or immigration, even though they have family relations as their central interest, do not seem to be able to impose norms in this sector that guarantee a harmonization of the material law of the legislation of the member countries. The concept of family can vary from one state to another, but also within a single state, whether we are talking about nuclear families or extended families. But, in all cases, the family has the right to protection from the state itself, in addition to society. In particular, it must be protected from interference that may be illegal, thus protecting the fundamental rights of all members of the family community.

The right to create a family belongs to every individual, respecting at all times the freedoms of the latter. The right that arises at the moment of the creation of a family, to live together, constitutes an obligation on the part of the state to guarantee the union and unity of families, especially when its members are separated for political or economic reasons. Thus, the topic of family reunification is taken as an essential element of the foreigner's legal situation and represents a continuous phenomenon in the mass social stabilization policies of young migrants (Sirianni, 2004).

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