

FUNDAMENTAL RIGHTS OBLIGATIONS OF EUROPEAN UNION MEMBER STATES WITHIN THE DECISION-MAKING PROCESS IN THE UN SECURITY COUNCIL

Tleuzhan Zhunussova (PhD researcher, European University Institute)

In the light of the landmark *Kadi* case¹ which asserted the primacy of the EU fundamental rights obligations of EU Member States over their obligations under the United Nations Charter, the proposed research project will examine whether and to what extent EU Member States are bound by fundamental rights guaranteed by the EU legal order when they act as the members of the Security Council. To this end, it will attempt to address the following questions:

Relation of Article 103 of the UN Charter to the EU Member States' fundamental rights obligations in the context of the decision-making within the Security Council

The research project will start from examining whether EU Member States are absolved from their human rights obligations under international and EU law when acting within the Security Council, by virtue of Article 103 of the UNC, read together with Article 25. In particular, the focus will be on whether Article 103, often conceived as the manifestation of both the supremacy of the UNC in international law and the unfettered powers of the Security Council, *a priori* precludes the application of human rights norms in relation to the Council decisions.

Fundamental rights as limitations to the EU Member States actions in the Security Council

The obligation to protect fundamental rights under Article 6 TEU, as flowing from both the general principles of EU law and the Charter of Fundamental Rights, generally applies to EU Member States when they act *in the context of EU law*.² As the *Ayadi* case³ illustrates, certain actions of EU member states within the framework of international organisations, and particularly, within the Security Council can also be regarded as falling within the scope of EU law and thus, as being capable of triggering states' fundamental rights obligations. The interpretation of the «scope of the EU law» in the context of the deliberations within the Security Council will be further developed, with particular focus on the distinction between the scope of the EU law and the scope of the EU competence.

Legal basis of the EU Member States' fundamental rights obligations within the Security Council

In further clarifying the scope of EU Member States' fundamental rights obligations within the Security Council, the proposed research will examine the duty of loyal cooperation and the obligation to eliminate incompatibilities with EU law in Article 351 TFEU as the relevant legal basis. Both the duty of loyal co-operation and Article 351 TFEU will be analyzed as the practical manifestations of the general loyalty obligation laid down in Article 4(3) TEU, which requires EU Member States to «take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union», including the obligations undertaken by the Member States under Article 6 TEU with regard to fundamental rights.

1 *Kadi and Al Barakaat International Foundation v Council and Commission*, Joined Cases C-402/05 P and C-415/05 P, European Court of Justice, 3 September 2008, 47 ILM 923 (2008)

2 Case C-617/11 *Åkerberg Fransson* [2013], para. 21

3 *Ayadi v Council*, Case T-253/02 [2006] E.C.R. 118-57; *Hassan v Council*, Case T-49/04 [2006] E.C.R. 95-129;