

concerning § 6 The fundamental values of the European Union

Diagram 2

The fundamental values of the European Union

I. The importance of common fundamental values in the European Union

- 1) *Background: the European Union as a supranational union* (→ see § 2 III of the course)
 - a dynamic non-state but *state-like organisation of integration* exercising on a large scale *supranational public power* and having a great impact on the life of the citizens
 - the first example of a new form of organisation ("Staatenverbund" ["compound of states"] or "supranational union"?)
- 2) *The need for homogeneity of value systems in a supranational union*
 - a) The concept of homogeneity of value systems
 - In any general political community, the *fundamental philosophical and political values and ideas* which mould the community and its members must be in fundamental accord.
 - Concerning a supranational union, the focus is not exactly on the various constitutional principles in the member states and the Union but on the underlying, more abstract, basic concepts of political theory. They need to be identical or similar and must have been put into practice to a comparable extent in every member state.
 - b) The homogeneity of the value systems as a precondition for successful supranational integration
 - otherwise dangerous conflicts will compromise the integration process
 - otherwise the Union cannot fulfill its *essential function to ensure the realisation of the fundamental values in times of globalisation*, when the overchallenged nation-states are not able to ensure it anymore
 - otherwise the citizens will not accept substantial burdens in order to provide solidarity with other member states and their citizens when it is needed

II. The fundamental values clause (art. 2 EU Treaty)

"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

- 1) *Not a political proclamation but directly binding law*
 - binding to the Union's institutions and to the member states (but not yet to Moldova under the Association Agreement)
 - primacy in validity over all secondary Union law
 - primacy in application over all national law (including the national constitution)
- 2) *A binding commitment to the political-philosophical concepts, not to a specific concretisation*
 - the general concepts can be realised and concretised in many different ways - as long as the core ideas are respected
 - for the Union the values are concretised in the Founding Treaties and the Charter of Fundamental Rights
- 3) *Philosophical and historical backgrounds*
 - no universal or universal Western values but *European values*
 - no pan-European but Western and Central European values
 - no Christian values but the values of the *free and democratic, rule of law based constitutional state*
 - rooted in the philosophy of the enlightenment and the French Revolution
 - influenced in particular by French and German constitutional theory but also by modern developments in civil society

III. The individual fundamental values

- 1) *Human dignity*
 - a concept strongly influenced by the philosophy of IMMANUEL KANT
 - a concept focusing on the *self-determination of all human beings, who are by nature free and equal and a value in themselves* and who must never be subjected to any inhuman or degrading treatment or demoted to an object
 - the "mother of all human rights" but also a human right in itself

2) *Human rights*

- following the Western concept as expressed in the human rights treaties prepared by the Council of Europe
- in particular (but not only) *freedom rights*, *equality rights* and *minority rights* (also of sexual minorities)
- including pluralism, tolerance, non-discrimination and equality between women and men as *values in society*
- concretised for the Union level in the *Charter of Fundamental Rights*, which distinguishes rights closely related to human dignity, freedom rights, equality rights, social rights, citizens' rights and justice
- the problem of the *parallelism of fundamental rights regimes* in Europe
 - the various f.r. on the national level (→ constitution), EU level (→ ChFR), pan-European level (→ ECHR etc.) and global level (→ ICCPR, ICESCR etc.) must be respected all at once

3) *Democracy*

- requires in particular free, equal and fair elections, respect for democratic freedoms and political neutrality of state media as a precondition for a democratic process
- no specific type of democracy (parliamentary/presidential/semi-presidential, direct/indirect democracy) required
- the problem of the *democratic deficit* in the European Union
 - governmentalisation (excessive influence of national governments through the Council)
 - de-parliamentarisation (loss of influence by national parliaments not fully compensated by gain of influence by EP)
 - unequal (degressively proportional) representation of the citizens of small and big member states in the EP
- the problem of the weakening of the democracy in the member states by the supranational integration

4) *Rule of law*

- an antithesis to totalitarianism but also a precondition of the functioning of the EU
- complemented by the *separation of powers*, which is essential for the effective realization of the rule of law
- different manifestations of the same fundamental idea in Europe: Rechtsstaatsprinzip (Germany), État de droit (France), rule of law (Britain) and general principles of law (EU law); a tendency of convergence in the course of integration
- key elements:
 - a) Primacy of the law
 - all activity of public institutions must be bound to the law
 - b) Effective enforcement of the law
 - in favour but also against the citizen!
 - c) Principle of proportionality
 - burdening measures must pursue a *legitimate aim*, be *suitable* and *necessary* to achieve that aim and *not* impose *a burden out of proportion* to the aim
 - d) Legal certainty and protection of legitimate expectations
 - clear and precise formulation of legal norms, clear limitation of conferred powers, no inconsistencies within the law, limits for legislation with retro-active affect, finality of administrative and court decisions
 - e) Effective legal protection
 - interim relief, right to the lawful judge, judicial independence [in practice!], right to be heard at the court
 - f) State liability for illegal acts of public authorities
 - g) Special principles in the field of criminal law
 - nulla poena sine lege, ne bis in idem, presumption of innocence, in dubio pro reo

5) *Solidarity*

- a value rooting in Christian heritage (→ charity) and going back to the French Revolution (→ fraternité)
- refers to social *security* and social *cohesion*
- concretised in the member states by *social fundamental rights* or a *principle of the social state* (Germany)
- concretised for the Union in many Treaty provisions and Title IV of the Charter of Fundamental Rights

Further reading: *Tuomioja*: Europe as a community of values and the challenges it faces. Speech to the Baltic Sea Region Model European parliament, Helsinki 14.4. 2015, <http://tuomioja.org/puheet/2015/04/europe-as-a-community-of-values-and-the-challenges-it-faces-speech-to-the-baltic-sea-region-model-european-parliament-helsinki-14-4-2015/>; *European Agency for Fundamental Rights (editor)*: The European Union as a Community of values: safeguarding fundamental rights in times of crisis, 2013, http://fra.europa.eu/sites/default/files/fra-2013-safeguarding-fundamental-rights-in-crisis_en.pdf; *Sedmak (editor)*: Grundwerte Europas [Fundamental values of Europe], vol. 1 - 5, 2010 - 2015 (monographies on solidarity, freedom, equality, justice, and tolerance; monographies on peace and human dignity planned for 2016 and 2017).