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Fundamental Rights in the European Legal Order, Both as a Limit on Punitive Power and as a Source of Positive Obligations to Criminalise

Anna Maria Maugeri*

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Abstract

This article examines, first of all, the role of fundamental rights in the evolution of European through the interpretation of the ECtHR (above all in the so-called 'pilot' judgments) and the and, secondly, how the recognition of fundamental rights by the European Courts influence harmonises the domestic legal orders, particularly in the field of criminal law.

Viewed in this way, fundamental rights assume a double function: on the one hand as a limit on the punitive power of the State, and on the other hand as a source of positive obligation to criminalise order to guarantee their protection. It is argued that the principle of proportionality represents the criterion used by the European Courts to evaluate the respect of fundamental rights within Europe and national legislation, in particular on the imposition of punitive sanctions, as provided for by Article 49(3) of the Nice Charter.

Keywords

[CJEU](#), [ECtHR](#), [fundamental rights](#), [positive obligation](#), [proportionality](#)



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