UPHOLDING UNION VALUES IN TIMES OF SOCIETAL CHANGE: THE ROLE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

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The European Union is based on the idea that in order to find peace and prosperity, the peoples of Europe must strive towards an ever closer Union. For the Member States, this means that they must tear down the barriers and erase the frontiers that have, in the past, driven them apart so that bridges of solidarity and mutual understanding can be built in their place. For individuals, the European Union opens a window of increased opportunity by allowing them to have access to the markets, education and culture of Member States other than their own. As the 2012 Nobel peace prize demonstrates, the authors of the Treaties were right to think that the European integration project would open the door to a new, stronger and more stable Europe.

Abstract though they may seem, these images of 'bridges', 'doors' and 'archways' served as a source of inspiration for the design of the euro banknotes. In an interview with *Le Monde*, Robert Kalina, the Austrian numismatic artist who designed them, explained that the iconography of the euro banknotes aimed to depict European values, such as openness, cooperation and communication.[1] In order to represent those values accurately, which are shared by all of us as well as by our humanist forefathers, the design of the euro banknotes had to be 'pan-European'. With that objective in mind, Kalina drew bridges, doors and archways which can be found all over Europe so that every citizen of the Union might identify with them. That is also the reason why, unlike national currencies, the euro banknotes do not depict any human figures. Thus, Kalina's design underscores the idea that Europe is all around us, but nowhere in particular.

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[1] *Le Monde*, 23 November 2001.

There is also a feeling of both 'continuity and change' in Kalina's design which illustrates the fact that, whilst the essence of European values has always been the same, the European Union must adapt to societal changes. The 'bridges', 'doors' and 'archways' depicted on the various banknotes evolve – from Classical, passing through Romanesque, Gothic, Renaissance, Baroque and Rococo, the Age of Iron and Glass, to modern 20th century architecture – and yet their purpose remains the same.

Interestingly, and some may even say ironically, it is on the euro banknotes – the currency that has brought about one of the most difficult crises the EU has ever faced – that one may find this profound message that the European integration project may evolve so as to cope with societal changes, provided that it remains faithful to its founding values.

The judgment of the European Court of Justice (the 'Court of Justice') in *Pringle* illustrates this point.[2] In that case, the Court of Justice was called upon to examine the compatibility with the Treaties of a European Council decision amending the Treaties (through the simplified procedure) and confirming that the Member States could establish a financial stability mechanism such as the European Stability Mechanism (the 'ESM'). It was also asked to determine whether the ESM Treaty was compatible with the Treaties and, in particular, with the no-bail out clause laid down in Article 125 TFEU. The Court of Justice replied to both questions in the affirmative. In so doing, it stressed the importance of the EU value of solidarity which, as Robert Schuman rightly foresaw, is an inseparable component of the European integration project. However, that value had to be adapted to the difficult economic context in which we live. Prior to the euro crisis, solidarity was understood in a narrow fashion, i.e. Member States had agreed to create a common currency because it would bring progress to each of them considered individually. That is why the EMU was designed in accordance with the notions of fiscal discipline and self-reliance: it is for each Member State to decide how to achieve a balanced budget; public bodies must have access to the financial markets under the same conditions as private companies; neither the EU nor the Member States may be held liable for the debts of another Member State, and the ECB may not purchase public bonds on primary markets. However, the euro crisis revealed that narrow

[2] Case C-370/12 *Pringle*, judgment of 27 November 2012, not yet reported.

solidarity is not enough, since the stability of the euro area as a whole requires that concept to be understood more widely: when a Member State is facing financial difficulties, the common good requires that other Member States join in the efforts to rescue it. In *Pringle*, the Court of Justice sought to reconcile those divergent conceptions of solidarity. More specifically, this meant that the financial assistance granted by the ESM had to comply with the no-bail out clause. Accordingly, the Court of Justice held that the compatibility with EU law of such financial assistance was subject to three cumulative conditions: (1) the Member State concerned must remain liable to its creditors, (2) the financial assistance provided by the ESM must operate as an incentive encouraging that Member State to attain a sound budgetary policy, and (3) such assistance must be limited to cases where the stability of the euro area as a whole is put at risk. Thus, *Pringle* shows that solidarity, as a founding value of the Union, was interpreted by the Court of Justice in light of both 'continuity and change'.

More generally, the idea that the European Union must remain faithful to its founding values whilst allowing room to adapt to societal change, is not limited to the Treaty provisions relating to EU economic policy, but pervades all areas of EU law.

As we all know, over the last sixty years, both the European Union and European societies have changed. On the one hand, the European integration project is no longer confined to economic and commercial matters relating to the establishment and functioning of the internal market. That project has evolved with the adoption of successive Treaty reforms so that the Union may now exercise its powers over areas of activity which had traditionally been reserved to the nation-State. As Title V of Part III of the TFEU shows, matters such as criminal law or family law are no longer the exclusive preserve of national sovereigns. This means that through the adoption of regulations or directives in the Area of Freedom, Security and Justice, the EU legislator now takes policy decisions that are likely to affect the everyday lives of European citizens.

On the other hand, since the second half of the last century, European societies have undergone a radical transformation. Socially, the progressive incorporation of women into the labour market has, for example, changed the roles that were traditionally allocated to men and

women. Waves of immigration have also modified the demographic structure of the Member States. National societies are no longer a homogenous block but are, more often than not, composed of citizens belonging to different ethnic, religious or racial groups. Politically, European liberal democracies have given weight to the idea that there is a sphere of individual freedom which must remain free from public interference.

Societal change at the level of the European Union and of national societies composing it, appear to influence each other. From a 'top-down' perspective, the European Union can trigger change in the societies of the Member States. The principle of democracy is a paradigmatic example. A State wishing to accede to the Union must comply with the so-called 'Copenhagen criteria'. Such a State must transform its society with a view to achieving respect for the rule of law, the principle of democracy and fundamental rights. From a 'bottom-up' perspective, national societies are not only the passive recipients of change, but may also serve as the initiators and promoters of it. Again, the principle of democracy illustrates this point. The EU democratisation process, and notably the progressive empowerment of the European Parliament, has been undertaken in order to reassure European citizens that the gradual transfer of powers from the Member States to the European Union does not give rise to a democratic deficit.

Naturally, as a judge and legal scholar, the aspect of this mutual influence which awakens my personal interest is the role that EU law has played in this parallel evolution. In this regard, legal sociology tells us that law is a powerful instrument which may operate either as a catalyst for or as a hindrance to societal change. This observation also holds true for the EU legal order. EU law may, on the one hand, facilitate change where the EU political process agrees to it. At EU level, social consensus is generally expressed through the Council and the European Parliament which are the EU political institutions entrusted with transforming any such consensus into a new 'law of the land'. Conversely, if social consensus is lacking, political deadlock may operate as a shield against unwanted winds of change.

For the EU Courts, the existence of social consensus is also an important factor when interpreting the law of the Union. In this regard, I would like to draw a distinction between

'constitutional consensus' and 'legislative consensus'. Whilst the former leads to the adoption of EU norms of the highest rank (primary EU law), the latter is an integral part of the daily functioning of the European political process. By 'legislative consensus' I do not only refer to EU norms which are unanimously adopted by the Council, but to all secondary EU norms which are the result of political agreement at EU level. For the purposes of this discussion, legislative consensus must be broadly understood. It goes without saying that it is more difficult to obtain a 'constitutional consensus' than a 'legislative consensus'. Indeed, in order to reform the basic rules which govern the EU, all Member States and, where appropriate, their citizens must agree to it. It also goes without saying that 'legislative consensus' must comply with 'constitutional consensus'.

The existence of constitutional consensus leads to the adoption of norms which become the 'supreme law of the land'. Those norms may contain values which are all-European and are to be found in primary EU law, i.e. the Treaties, the Charter of Fundamental Rights of the European Union (the 'Charter') and judge-made principles of law (known as general principles of EU law). For example, in the *Berlusconi* case,[3] the Court of Justice ruled that 'the principle of the retroactive application of the more lenient penalty forms part of the constitutional traditions common to the Member States'. It is worth noting that that general principle is now enshrined in Article 49 of the Charter.

Norms which reflect European constitutional consensus bring stability to the European integration project. For example, the *Kadi* judgments show that the EU Courts are seriously committed to the protection of fundamental rights.[4] In so doing, they have held that EU regulations implementing a UN Security Council Resolution imposing restrictive measures upon individuals are not immune from judicial review. That being said, fundamental rights, such as the right to effective judicial protection and the rights of the defence, are not absolute, but may be subject to limitations. This means, for example, that it is for the EU Courts to determine whether the information or evidence in possession of the

[3] Joined Cases C-387/02, C-391/02 and C-403/02 *Berlusconi and Others* [2005] ECR I-3565.
[4] Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351 and Joined Cases C-584/10 P, C-593/10 P and C-595/10 P *Commission, Council and UK v Kadi*, judgment of 18 July 2013, not yet reported.

competent EU authority is to be disclosed or not, to the person concerned. In this manner, the EU Courts strike the balance between the adversarial character of the procedure, on the one hand, and international security, on the other.

Striving for European constitutional consensus does not, however, operate as a hindrance to social change. On the contrary, where a Member State departs from norms that implement values which are recognised as all-European, those very norms that have been breached may in fact bring about change to the society of the defaulting Member State. For example, in *Roca Álvarez*,[5] the Spanish law at issue in the main proceedings provided that female workers were entitled to take one hour off from work in order to breastfeed a child under the age of nine months. That leave had been legally detached from the biological fact of breastfeeding, so that it could be considered as time purely devoted to the child. For male workers, the 'breastfeeding' leave was made conditional upon the mother of the child also being employed. This meant for Mr Roca Álvarez whose wife was self-employed that he was not entitled to such leave. Before the Spanish courts, he argued that Spanish law was not compatible with the EU principle of equal treatment for men and women which was at the time, as regards working conditions, implemented by Directive 76/207 (now Directive 2006/54). The Court of Justice agreed with him. At the outset, it noted that, since the leave at issue had been detached from the biological fact of breastfeeding and was thus accorded to workers in their capacity as parents of the child, it could not be regarded as ensuring the protection of the biological condition of the woman following pregnancy nor indeed the protection of the special relationship between a mother and her child. Nor could it be regarded as a measure eliminating or reducing existing inequalities in society between men and women. As a matter of fact, the Court of Justice observed that the wife of Mr Roca Álvarez was obliged to reduce her self-employed activities to take care of their child, which made it more difficult for her to compete in the market and to pursue her career on an equal footing with men. In the key passage of the judgment, the Court of Justice held that the Spanish law at issue was 'liable to perpetuate a traditional distribution of the roles of men and women by keeping men in a role subsidiary to that of women in relation to the exercise of their parental duties'. The ruling of the Court of Justice brought about an important change to

[5] Case C-104/09 *Roca Álvarez* [2010] ECR I-8661.

Spanish society: fathers, such as Mr Roca Álvarez, may now, by virtue of the EU principle of equality between men and women, leave work earlier in order to spend more time with their babies.

In the absence of constitutional consensus, the Court of Justice will not engage in judicial law-making by creating a new constitutional norm, such as a new fundamental right. Instead, it will opt for a prudent approach and defer, where appropriate, to the solutions adopted by the constitutions of each Member State. For example, there is no European constitutional consensus as to whether same-sex couples should have a fundamental right to marry and if so, whether same-sex marriage should stand on an equal footing with heterosexual marriage. It is true that Article 9 of the Charter recognises the right to marry and to found a family. However, as the explanations relating to that Article of the Charter state, the latter 'neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex'. This means that it is for each Member State to decide whether same-sex couples should enjoy a right to marry. This may change in the future. If European societies were ever to evolve in that direction, then the Court of Justice would reflect such constitutional consensus in primary EU law.

However, the absence of constitutional consensus regarding the existence of a fundamental right does not mean that Member States enjoy absolute discretion in making their social choices. In exercising such discretion, Member States must comply with other norms embedding EU values. National choices are thus circumscribed by EU values. Coming back to the example of same-sex couples, the *Maruko* and *Römer* cases demonstrate that,[6] in so far as national law treats marriage and same-sex partnerships alike, any discriminatory treatment regarding matters falling within the scope of EU law would be contrary to the principle of non-discrimination on grounds of sexual orientation. Hence, if, under national law, marriage and same-sex partnerships stand on an equal footing, a national measure, which limits survivors' benefits under a compulsory occupational pensions scheme to surviving spouses and thereby falls within the scope of Directive 2000/78, would run counter to the

[6] Case C-267/06 *Maruko* [2008] E.C.R. I-1757, and Case C-147/08 *Römer* [2011] ECR I-3591.

principle of equal treatment. In addition, in order for discrimination to arise, marriage and same-sex partnerships need not be in identical situations under national law. They need only be comparable in light of the objective of the benefit at issue in the main proceedings and of the conditions relating to the grant of it. For example, in *Hay*,[7] Mr Hay concluded a PACS (civil partnership) with a person of the same sex. The PACS was, at the time of the facts in the main proceedings, the only possibility under French law for same-sex couples to procure legal status for their relationship which could be certain and effective vis-à-vis third parties. On that occasion, Mr Hay applied for the days of special leave and the marriage bonus granted to employees who marry, in accordance with his employer's national collective agreement. However, his application was rejected on the ground that those benefits were granted only upon marriage. When determining whether a PACS concluded by two persons of the same sex – as provided for by French law – was comparable to marriage, the Court of Justice limited its analysis to the benefit in question, namely the days of special leave and the marriage bonus granted to employees who marry. Thus, the differences between marriage and the PACS, noted by the French courts in the dispute in the main proceedings, in respect of the formalities governing its celebration, the possibility that it may be entered into by two individuals of different sexes or of the same sex, the manner in which it may be broken, and in respect of the reciprocal obligations under property law, inheritance law and the law relating to parenthood, were irrelevant to the assessment of an employee's right to benefits in terms of pay or working conditions such as those at issue in the main proceedings. Given that the days of special leave and the marriage bonus were granted on the occasion of marriage, irrespective of the rights and obligations arising from that marriage, the Court of Justice reasoned that the PACS and marriage were comparable for these purposes. Accordingly, the denial of those benefits to employees having entered into a PACS with a person of the same sex constituted discrimination on grounds of sexual orientation.

Furthermore, in order to achieve legislative consensus, the EU political institutions may deliberately decide that some matters are best left unresolved. In such cases, litigation will inevitably lead to solving questions that the political process did not address. Litigation may also contribute to solving legal problems which arise from new developments in science

[7] Case C-267/12 *Hay*, judgment of 12 December 2013, not yet reported.

and technology. This requires the Court of Justice to shed new light on those issues. This may be a complex task, notably where the national court asks the Court of Justice for guidance in matters relating to bioethics.

For example, Directive 92/85 provides that the Member States shall take the measures necessary to prohibit the dismissal of pregnant workers during the period from the beginning of their pregnancy to the end of their maternity leave. In *Mayr*,[8] a female worker was dismissed whilst she was undergoing *in vitro* fertilisation treatment. As a result of that treatment, she was feeling sick and could not come to work. At the time of the dismissal, her ova had already been fertilised by her partner's sperm cells, but those ova had not yet been transferred to her uterus. Thus, the Court of Justice was called upon to determine whether that female worker was dismissed at a time when she was pregnant. In carrying out its analysis, the Court of Justice stressed that it did not intend to solve questions of a medical or ethical nature, but merely to interpret the relevant provisions of Directive 92/85. It noted that the objective of the prohibition of dismissal provided for in Directive 92/85 is to avoid the risk of a dismissal, for reasons linked to the pregnancy, having harmful effects on the physical and mental state of pregnant workers. This means that it is the earliest possible date in a pregnancy which must be chosen to ensure the safety and protection of pregnant workers. However, compliance with the principle of legal certainty prevents pregnancy from beginning before the ova were transferred to the uterus. Since it was both legally and medically possible to keep the fertilised ova outside the uterus for many years, applying the protection against dismissal laid down in Directive 92/85 in favour of a female worker before the transfer of the fertilised ova could have the effect of granting the benefit of that protection even where that transfer is postponed, for whatever reason, for a number of years or even where such transfer is definitively abandoned, the in vitro fertilisation having been carried out merely by way of a precaution. That being said, the Court of Justice decided to examine the dismissal at issue in the main proceedings in light of the principle of equal treatment for men and women which was at the time, as regards working conditions, implemented by Directive 76/207 (now Directive 2006/54). It held that if a female worker is dismissed on account of absence due to

[8] Case C-506/06 *Mayr* [2008] ECR I-1017.

illness brought about by the *in vitro* fertilisation treatment that she is undergoing, then such dismissal constitutes direct discrimination on grounds of sex.

Similarly, in *Brüstle*,[9] the Court of Justice was asked to interpret the concept of a 'human embryo' for the purposes of Directive 98/44 which provides that the 'use of human embryos for industrial or commercial purposes' may not be patented. However, the EU legislator did not define the concept of a 'human embryo', leaving that question to judicial interpretation. This was a delicate task for the Court of Justice given that it was in fact asked to define when human life begins. Just as it did in *Mayr*, the Court of Justice made clear that it did not seek to broach questions of a medical or ethical nature, but to determine the scope of the concept of 'human embryo' for the sole purpose of interpreting Directive 98/44. Since the relevant provisions of the Directive did not make reference to the laws of the Member States, that concept had to be interpreted in a uniform manner throughout the territory of the Union. The Court of Justice ruled that that concept had to be interpreted in light of the dignity and integrity of the person, a fundamental right which is recognised by the constitutional traditions common to the Member States and which is now enshrined in Article 1 of the Charter. This meant that the concept of 'human embryo' had to be interpreted broadly so as to include any cells capable of commencing the process of development into a human being.

Mayr and *Brüstle* are both important judgments illustrating the fact that the Court of Justice may be called upon to define concepts of a moral, social and even philosophical nature. In so doing, the Court of Justice acts circumspectly. When defining concepts such as 'the beginning of pregnancy' and a 'human embryo', the Court of Justice restricts itself to interpreting those concepts for the sole purposes of the EU measure in question. Hence, it does not seek to provide a general definition of those concepts which would amount to imposing a uniform notion of public morality on all the Member States as this would be contrary to the pluralism on which the EU is founded.

Whilst it is true that values such as democracy and the rule of law are recognised as all-European, the European integration project does not exclude national diversity. On the

[9] Case C-34/10 *Brüstle* [2011] ECR I-9821.

contrary, as Article 4, paragraph 2, TUE states, the European Union is committed to respecting the national identities of its Member States. Pluralism means that each national society remains free to evolve differently according to its own scale of values. Value diversity must, where possible, be respected and preserved by the European Union.

However, neither unity nor diversity is absolute. The European Union may not deprive the Member States of their own identities. Nor may those national identities jeopardise the European integration project as a whole. The survival of the European Union requires that what brings us together must remain stronger than what pulls us apart. It follows that pluralism is a relative value which must be respectful of a core nucleus composed of the basic constitutional tenets of the EU. This understanding of pluralism is what Delmas-Marty describes as 'ordering pluralism'.[10] Logically, the question then is *how* pluralism must be ordered?

In my view, there is room for value diversity in the absence of a European legislative consensus as to the level of protection that must be given to a common good. This means, for example, that where a matter falls within the scope of EU law and the EU legislator has not yet determined the precise level of protection that must be given to a fundamental right, it is for the society of each Member State to make that determination. Yet, since pluralism is not an absolute value, the level of protection granted to a fundamental right by a national legal order must comply with any constitutional consensus that exists at EU level. In the realm of fundamental rights, this means that value diversity may be expressed, provided that 'the level of protection provided for by the Charter, as interpreted by the Court [of Justice], and the primacy, unity and effectiveness of European Union law are not […] compromised'.[11] By contrast, value diversity is ruled out where there is a European legislative consensus as to the precise level of protection that should be granted to a particular fundamental right. Of course, any such EU legislative consensus must also comply with the EU constitutional consensus. Concretely, this means that the policy choices made by the EU legislator must provide a level of protection which is at the very least equal to that provided for by the Charter.

[10] See generally M. Delmas-Marty, *Ordering Pluralism* (Oxford, Hart Publishing, 2009).
[11] Case C-617/10 *Åkerberg Fransson*, judgment of 26 February 2013, not yet reported.

The interaction between the EU legislative consensus and value diversity is highlighted by contrasting the rulings of the Court of Justice in *Melloni* and *Jeremy F.*[12] In both cases, the Court of Justice was confronted with questions relating to the validity and interpretation of the EU Framework Decision on the European Arrest Warrant. Both cases also share another common feature: they constitute the first references ever made, respectively, by the Spanish Constitutional Court and the French *Conseil constitutionnel*.

In *Melloni*, the EU legislator sought to harmonise the grounds for non-recognition of decisions rendered following a trial at which the person concerned did not appear in person (a person convicted *in absentia*). To that end, it laid down a list of the circumstances in which, in spite of the fact that the person concerned was convicted *in absentia*, the European arrest warrant must nevertheless be executed. For example, the Framework Decision states that refusal of execution of a decision rendered *in absentia* may not take place where the person concerned, who is aware of the scheduled trial, has appointed legal counsel, and he or she was in fact defended by that person at the trial. The Spanish Constitutional Court asked whether the Framework Decision allowed value diversity, given that, under the Spanish Constitution, the execution of a decision rendered *in absentia* was always made conditional upon retrial. The Court of Justice replied in the negative. By striking the balance between enhancing mutual recognition in criminal matters and the rights of the defence, the EU legislator had defined the precise level of fundamental rights protection with which all Member States must comply. Thus, the EU legislative consensus prevailed over value diversity. Logically, the Spanish Constitutional Court also asked whether that legislative consensus complied with the Charter, to which the Court of Justice replied in the affirmative. Indeed, the balance struck by the EU legislator was held to comply with Articles 47 and 48 of the Charter. In so ruling, the Court of Justice held that the fundamental right to effective judicial protection and the rights of the defence are not absolute but may be subject to limitations, provided that those limitations pursue a legitimate objective and are compatible with the principle of proportionality. This was the case. The strengthening of mutual

[12] Case C-399/11 *Melloni*, judgment of 26 February 2013, not yet reported, and Case C-168/13 PPU *Jeremy F.*, judgment of 30 May 2013, not yet reported.

recognition in criminal matters is an objective recognised by the Treaties. As to the principle of proportionality, the Framework Decision lays down the circumstances in which the person concerned must be deemed to have waived, voluntarily and unambiguously, his right to be present at his trial. Hence, the Court of Justice ruled that the legislative consensus set out in the Framework Decision complied with the constitutional consensus reflected in the Charter.

Before examining the ruling of the Court of Justice in *Jeremy F.*, it is worth pointing out that the issuing of a European arrest warrant must comply with the principle of specialty. This means that a warrant may only be executed in respect of the offences listed therein. If the requesting authority wishes to prosecute the person surrendered for offences other than those for which that person has been surrendered, the executing authority must adopt a decision agreeing to it. The facts of the case, which were all over the UK media, are as follows. A high school teacher, Mr Jeremy F., had run away with one of his female students of minor age, when UK authorities issued a European arrest warrant against him in connection with criminal proceedings brought against him for acts which could be classified in English law as child abduction. A few days later, he was detained by French authorities and consented to be handed over to the UK authorities. The European arrest warrant was executed by the Cour d'appel de Bordeaux, and Mr Jeremy F. was sent to the UK.

Subsequently, the UK judicial authorities decided to prosecute him for the offence of sexual activity with a child under 16. Accordingly, they requested the Cour d'appel de Bordeaux to give its consent as that offence might constitute an offence other than that for which he had been handed over. The Cour d'appel de Bordeaux delivered a judgment in which it agreed to that request.

Mr Jeremy F. brought an appeal against that judgment before the Cour de cassation. After noting that Article 695-46 of the French Code of Criminal Procedure did not allow for such an appeal, the Cour de cassation called into question the constitutionality of that provision and referred the case to the *Conseil constitutionnel* for consideration.

Having doubts as to the compatibility of that Article of the French Code of Criminal Procedure with the French Constitution, the French *Conseil constitutionnel* asked the Court of Justice whether the Framework Decision had to be interpreted as precluding Member States from providing for a constitutional right which would enable the person concerned to bring an appeal having suspensive effect against a decision agreeing to the request in issue.

The Court of Justice reached the conclusion that it did not. The Framework Decision did not prohibit the person concerned from bringing such an appeal. Nor did it require Member States to make provision for it. The Charter leads to the same conclusion: its Article 47 affords an individual a right of access to a court but not to a particular number of levels of jurisdiction. Regarding the possibility of making such an appeal, there was therefore no European consensus, be it legislative or constitutional. As a consequence, it was for each Member State to decide whether its constitutional law permitted the national legislator to rule out such an appeal or else to provide for it. Needless to say, in making provision for such an appeal the national legislator could not call into question the system of mutual recognition set out in the Framework Decision. This meant, in particular, that such an appeal could not prevent the executing authority from adopting a decision within the time-limits prescribed by the Framework Decision.

It follows from *Melloni* and *Jeremy F*. that it is not for the Court of Justice to decide when and how national diversity is to be replaced by European unity. That is a decision to be made by the EU political institutions. Since the EU is governed by the principle of democracy, it is for the EU political process to draw the line between unity and diversity. As a court that upholds the rule of law, the Court of Justice may only ascertain that, when drawing that line, the EU political institutions have complied with the EU constitutional consensus.

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In summary, the European Union must remain faithful to its founding values. Those values imbue the European integration project with stability. In particular, they may serve as a guiding compass for the Court of Justice to navigate a course through unchartered waters. This can be seen in cases such as *Mayr* and *Brüstle*.

European values which are the result of a constitutional consensus are embedded in primary EU law. It is essentially for the political process to determine when, and indeed whether, those norms – which require the unanimous consent of the Member States and, where appropriate, of their citizens – should be adopted. Constitutional consensus can also lead to the adoption of general principles of EU law. These principles allow room for flexibility, yet in a context of conceptual continuity between the European Union and its Member States. When discovering a general principle, the Court of Justice serves as a bridge between the constitutional traditions common to the Member States and their shared European values.

As the *Melloni* and *Jeremy F.* cases demonstrate, it is the existence or absence of an EU legislative consensus that indicates whether the Member States are developing at the same pace and in the same manner or whether national societies are evolving in accordance with their own scales of values. That being said, national diversity and EU legislative consensus must both comply with values which are regarded as all-European, i.e. those that are the object of a constitutional consensus at EU level. It is this latter consensus that guarantees that the forces that bring Europeans together are stronger than those that pull them apart.

Unity and diversity must be understood as two sides of the same coin. The European Union must be respectful of both, given that neither suffices to explain the European integration project as a whole. Just as the euro banknotes bear images which illustrate the fact that the European Union is committed to upholding its shared, founding values whilst allowing room for societal change, pluralism seems to be the message conveyed by the images on the euro coins. On one side, there is a map of Europe which is present in all euro coins. On the other side, it is for each of the 18 Member States whose currency is the euro to decide how it wishes to express its identity. And yet, both sides are minted together into a single, coherent existence.

Thank you very much.