The national legal system in tune with the European and international law: issues of sovereignty?

Symposium organised by the Council of State and the Court of Cassation

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First President,
Attorney General,
Members of the Judiciary,
Ladies and Gentlemen,
My dear colleagues,

Being the outcome “of a long invention encompassing the rational (dispute) to the unusual”\(^2\), sovereignty has always questioned and crystallised controversies. Even the slightest mention of the word by lawyers evokes a reaction from the staunchest defenders and detractors alike; they analyse its attributes and tempers flare; they talk of who is entitled to sovereignty and a battle ensues. It is therefore necessary to put the question of sovereignty on hold and take a clean and coherent look, with the required objectivity, at the existing relationship between our legal system and international, in particular European, law. This is what has brought us all to this symposium, organised jointly by the Council of State and the Court of Cassation, after the two previous events in 2011 which focused on the issue of health and justice and in 2013 on the issue of sanctions.

The “globalisation of law”\(^3\) destabilises, without making it totally inoperative, a “classic” conception of the hierarchy of standards and the relationship between legal systems\(^4\). A strictly pyramidal model has been replaced by a networks of standards that, from one system to another, either stand apart or match each other; a continuous area of permanent exchanges and influence has developed at the junction of internal and international systems; a variety of “centres of juridicity”\(^6\) have flourished amidst the cracks of the monopoly of regulatory function of States, where new and more flexible, but not less directive, instruments are developing. In the age of legal pluralism\(^7\), the “true marks of sovereignty”\(^8\), as defined

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\(^1\) Text written in collaboration with Stéphane Eustache, judge of the Administrative Court and the Administrative Court of Appeal, special adviser to the Vice-President of the Council of State.
\(^3\) J.-B. Auby, La globalisation, le droit et l’Etat, pb. LGDJ, 2010.
\(^4\) On this point, see B. Bonnet, Repenser les rapports entre ordres juridiques, pb. Lextenso, 2013.
\(^7\) Phenomenon that takes a normative, institutional as well as sociological appearance, see on this point, J.-B. Auby, La globalisation, le droit et l’Etat, pb. LGDJ, 2010, p. 204.
by Jean Bodin in the sixteenth century, still remain, but have been redistributed, which, far from leading to the decline of nation-states, requires us to conceive and regulate a “collective exercise” of sovereignty. The re-composition of the relationship between legal systems is not without legitimate questions on national sovereignty and identity, or without entirely new risks of legal uncertainty, friction and even rivalry. Therefore, we must take seriously the contemporary and shared requirement of systemic regulation. The legal systems simply cannot co-exist, they must combined, sometimes blend with each and merge, sometimes complement and differentiate from each other, and sometimes be re-prioritised.

If we have not implemented a superlative or excessive idea of sovereignty, it is because our legal system has long been, without giving up its identity, open to international law, and in particular, European law (I). However, the effectiveness of instruments that help control and regulate this open approach should be reconsidered (II).

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I. The opening of our legal system to international law is manifested by a triple phenomenon of incorporation (A), appropriation (B) and overlapping (C).

A. International law does not enter our legal system by breaking into it; it enters through the appropriate channels and following the procedures defined since 1946 by our Constitution. It is integrated into the system in adherence to a hierarchy of standards that existed previously, embraces it and gives it its value and scope. Nearly 70 years ago, France chose a monistic legal system, unlike other major dualist States or States with a dualistic tendency such as the United Kingdom, Italy or Germany. Whether one considers this choice appropriate - which is what I believe - or not, it is that of the constituent and therefore a product of the most solemn expression of the French people.

In this context, the judges in France regulate the adherence to the constitutional conditions of introduction of a treaty in the domestic system, whether it refers to the existence of an act of ratification or approval of the jurisdiction of the authority that has issued it and, in particular, the obligation for legislative authorisation. On the basis of Article

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8 J. Bodin, Les six livres de la République, 1576, repub. 1986, pb. Fayard, Book I, chap. X, p. 306. According to Bodin, absolute sovereign power requires that “those who are sovereign need not in any way be subject to other’s commands and that they are able to provide legislation to the people and to discard or overrule unnecessary laws to then make others” (ibid, p 191); for an interpretation of Bodin’s theses, see: F. Chaltiel, La souveraineté de l’État et l’Union européenne, l’exemple français, pb. LGDJ, 2000.
9 F. Chaltiel, La souveraineté de l’État et l’Union européenne, l’exemple français, pb. LGDJ, 2000, p. 466.
10 See Art. 26 of the Constitution of 27 October 1946: “The duly ratified and published diplomatic treaties acquire force of law even in a situation where they are contrary to French laws, without the need to ensure the application of laws other than those that would have been necessary to ensure their ratification”; art. 55 of the Constitution of 4 October 1958: “The duly ratified or approved treaties or agreements shall have, upon publication, authority superior to that of laws, subject, for each agreement or treaty, to its application by the other party.” The reservation expressed by art. 55 of the Constitution of 4 October 1958 has not substantially changed the scope of the rule in art. 26 of the Constitution of 27 October 1946.
55 of the Constitution and according to the “rule of conflict of norms” enacted by this article, judges of our country have ensured, for 40 years as regards judicial judges and for 25 years as regards the administrative judges, the primacy of treaties over even subsequent laws, thus filling the “jurisdictional vacuum” created by the IVG decision of the Constitutional Council. Although this primacy was conferred, in particular, upon the laws derived from the European Union, its regulations and its directives, it does not extend to international customs or the general principles of international law. The primacy of treaties in domestic law, however, ends where that of the Constitution that precedes it and establishes it starts. The supremacy of France’s international commitments “does not apply to the constitutional provisions”, which culminate at the “top of the domestic legal order”, and when such commitments “comprise a clause contrary to the Constitution, call into question the constitutionally guaranteed rights and freedoms or violate the essential conditions for the exercise of national sovereignty, the authorisation to ratify them calls for a constitutional amendment”. As noted by President Ronny Abraham, “in the internal system, everything is derived from the Constitution. (...) This supremacy is therefore, as long as the international society will be based on the political fact of the sovereignty of States, a primary and inescapable truth”.

B. Second, appropriation of international law by citizens and litigants has been regulated through the direct effect theory which, in the manner of a “lock” allows “international standards to enter the internal system at a measured and controlled rate”. Any person can indeed rely directly on the provisions of a treaty, when their “sole purpose is not to govern relations between States and they do not require the intervention of any additional act to have an effect”. As stated by the Council of State, these two criteria based on the purpose and completeness of the provisions invoked are implemented in relation to “the intention of the parties and the general economy of the treaty invoked, as well as its content and its terms”, so that the absence of a direct effect “cannot be inferred from the mere fact that the stipulation

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14 CE 2 January 2005, Deprez and Baillard, Rec. 1, no.257341.
17 P. Frydman’s conclusions on the aforementioned Nicolo case, Rec. p. 194.
18 CC no. 74-54 DC of 15 January 1975, Law on voluntary termination of pregnancy.
19 CE 24 September 1990, Boisdet, Rec. 251, no.58657.
28 CE, Ass., 11 April 2012, GISTI and FAPIL, Rec. 142, no.322326; for example, for cases of direct enforceability: CE 4 July 2012, Confédération française pour la promotion sociale des aveugles et des amblyopes, No. 341533 (art. 15 of the European Social Charter), CE 10 February 2014, Fischer, No. 358992 (art. 24 of the European Social Charter), CE 30 January 2015, Union syndicale solidaires, No. 363520 (Article 2 of Part II of the European Social Charter); for a case where direct enforceability was not recognised: CE, Ass., 12 April, 2013, Association coordination interrégionale stop THT, No. 342409. (Art. 6 § 9 of the Aarhus Convention)
[invoked] recognises the party States as being subject to the obligation it defines”. When a treaty for review of the validity of the law of the European Union is invoked, the French court itself implements, in the absence of serious difficulties, similar criteria of the direct effect which have been identified by the EU Court of Justice. In the case of European directives, which in principle do not have a direct effect, a special system has been developed, which can be relied upon under certain conditions. Any individual subject to trial can indeed argue, by way of action or exception, that after the expiry of the deadline for their transposition, the national authorities can neither leave behind, nor continue to apply rules, whether written or unwritten, of the national law, which are not compatible with the objectives set by the directives. In addition, any individual subject to trial may rely, in support of an action directed against a non-regulatory administrative act, on precise and unconditional provisions of a directive, when the State has not taken the necessary transposition measures within the defined time limit. This particular enforceability, recognised with double confirmation of the Treaty establishing the European Community and Article 88-1 of the Constitution, however, has not been extended and cannot be extended in the state in case of conventional international commitments that have no direct effect.

In general, the appropriation of international law by individuals was made possible thanks to an improvement in the office of the judge, who interprets the provisions of the treaties, including a reciprocity clause, and where necessary, strikes a balance between international conventions, without ruling on the validity of one in relation to other. When it assumes its responsibilities, the national court seeks, integrates and even anticipates the point of view of the European courts: it makes relevant use of the institutionalised channels of dialogue - prejudicial questions referred to the Court of Justice, an advisory opinion procedure before the European Court of Human Rights;

29 CE, Ass., 11 April 2012, GISTI and FAPIL, Rec. 142, no.322326.
30 CE 6 December 2012, Société Air Algérie, Rec. 398, No. 347870; “the provisions of an international treaty may, however, be usefully relied on for the purposes of reviewing the validity of the act of the EU law only if, firstly, the nature and economy of the convention in question do not preclude it and if, secondly, they appear, from the point of view of their content, unconditional and sufficiently precise, and contain a clear and precise obligation that is not subject, in its implementation or its effects, to the adoption of any subsequent act”.
31 CJEU, Grand Chamber, 3 June 2008, Intertanko, C-308/06, § 45 and CJEU, Grand Chamber, 9 September 2008, FIAMM, C-120/06, § 110: “it is clear in particular from the Court’s case law that it considers that it can proceed with the review of the validity of a community regulation derived under an international treaty only when the nature and economy of the latter do not preclude that this and, in addition, its provisions appear, from the point of view of their content, unconditional and sufficiently precise”.
32 CE, Ass., 30 October 2009, Perreux, Rec. 407, No. 298348, M. Guyomar’s conclusions; for a case of direct enforceability of a directive against a non-regulatory administrative act, see: CE, Opinion, 21 March 2011, Jin and Thierno, No. 345978; for the absence of direct enforceability of a directive against a non-regulatory administrative act, see: CE 1 March 2013, Société Roozen France, CRIHRAD and others, no.340859.
33 As emphasized by the Council of State in the Gisti judgement of 11 April 2012 cited above, unlike the conclusions of its public rapporteur.
37 CE 8 July 2002 Porta Common, No. 239366; CE, Ass., 9 July 2010, Fédération nationale de la libre pensée, No. 327663.
38 As regards the “acte clair” the theory, see: CE, Ass., 19 June 1964, Société des pétroles Shell-Berre, Rec. 344, No. 47007; CJCE 6 October 1962, CILFIT, Rec. 3415 C-283-81.
39 When protocol no. 16 signed by France on 2 October 2013 becomes effective.
it transfers its entire scope to the authority for judgments of the Court of Luxembourg and ensures that administrative authorities duly take into account the judgments of the Strasbourg Court and draw all the conclusions from this, without, however, in the absence of a national law that authorises it, calling into question, even for violations of the European Convention on Human Rights, the authority of res judicata at the national level.

C. Third, the overlapping of the internal system with a plurality of international systems, far from dissolving our identity, has instead acted as a pointer.

The same courts apply and protect the rights of the same people, set out in similar terms, but belonging to autonomous legal systems and implemented using different techniques. In this environment marked by a plurality of distinct but overlapping normative systems, the risk of chaos is naturally high and the risk of a “clash of primacies” also cannot be ruled out. Our constitution has anticipated and internalised these risks and the resulting complementarity requirements. By making it more open, our internal system has diversified its sources and has restructured itself; by combining with other systems, it has established a new hierarchy within itself; by “Europeanising” itself, it has retained control of consented transfers of competence and has reserved the power to have the “last word” in exceptional cases. This is why the specificity of the European Union law and its “integrated” legal system has been recognised. The participation of France in the “creation and development of a permanent international organisation with a legal identity and invested with decision-making powers” has indeed become an independent source of constitutional requirements, combining the objectives of integration and protection of the constitutional traditions common to the Member States. In this respect, if the obligation to transpose the European Directives was derived from Article 88-1 and is of constitutional value, it cannot, however, authorise the transposition of directives that would go against the rules or principles inherent to “the constitutional identity of France” - except when the constituent has expressly consented. Similarly, if Article 88-

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40 Regarding the interpretation of the EU law, see in particular: CE, Ass., 11 December 2006, Société de Groot en Slot Allium BV and société Bejo Zaden BV, Rec. 512, no.234560; regarding the possibility of modulating the effects of a contentious revocation: CE 28 May 2014, Association Vent de colère !, no.324852.

41 See the previous Art. 626-1 of the Code of Criminal Procedure, created by Law No. 2000-516 of 15 June 2000, the substance of which was included in Art. 622-1 of the same Code, created by Law No. 2014-640 of 20 June 2014 on the reform of revision and review procedures for a final criminal conviction: “The review of a final criminal judgment may be sought for any person deemed guilty of an offense, if it appears from a judgment of the European Court of Human Rights that the conviction has been imposed in violation of the European Convention for Human Rights and Fundamental Freedoms or its additional protocols, since, by its nature and seriousness, the violation leads, for the convicted, to harmful consequences that cannot be brought to an end by the pecuniary compensation granted pursuant to Article 41 of the said convention. The review may be sought within a period of one year from the decision of the European Court of Human Rights. The review of a cassation complaint may be sought under the same conditions”.


44 As underlined in Article 6 of the Treaty on the European Union.


46 CC no.2006-540 DC of 27 July 2006, Law on copyright and related rights in the information society, cons. 19; by the same decision, the Constitutional Council states that “insofar as it is required to give its ruling before the promulgation of the statute in the timeframe provided for by Article 61 of the Constitution, the Constitutional Council cannot refer the matter to the European Court of Justice on the basis of Article 234 of the Treaty on the Functioning of the European Union” and that “it can rule unconstitutional under Article 88-1 of the Constitution only a statutory provision that is manifestly incompatible with the directive that it purports to transpose” (cons. 20). The Council reiterates in this respect that “in all events, it is incumbent upon the courts of law and administrative courts to review the compatibility of a statute with
of the Constitution provides for the implementation of the European arrest warrant in accordance with the actions taken to this effect by the EU institutions, this obligation shall not prejudice the constitutional rights and principles, when the national authorities make use of their margins of appreciation. Sovereignty reserve clauses have therefore been introduced on the path of European integration. They have functioned less as barriers to integration, and more as beneficial safeguards.

Under these conditions, the opening of our legal system to international law was one of the most prolific factors behind the transformation of our rule of law, while preserving our right of self-determination. The achievements are considerable as the international safeguards have raised the level of internal safeguards. The achievements have served as a springboard or an incentive for their development, at times even beyond European standards. This virtuous circle must be preserved and maintained, even if permanent risks of obstruction remain.

II. The intensity of the “normative interactions” between legal systems today calls for reinforced actions of coordination (A), homogenisation of the rights protected by multiple legal systems (B) and integration at the level of the European Union (C).

A. First, the objective of better coordination between separate but intertwined normative systems is a responsibility shared between the States and the European and international authorities.

The principle of subsidiarity is the key instrument for this sharing. In the system adopted by the European Convention on Human Rights, the States have, “through their direct and continuous contact with the vital forces of their countries”, national margins of appreciation in the process of ensuring the implementation of the rights and freedoms guaranteed by the Convention. The magnitude of these margins is neither uniform nor unlimited, and varies according to the nature of the interests involved and the degree of consensus between the laws of the states of the Council of Europe. They are all the more restricted when the protected interests affect “an essential aspect of individual identity”, such as filiation, or when a “strong benefit for a democratic society”, such as freedom of expression is affected. In contrast, the margins will tend to be wider where the issue at stake constitutes “a choice of society”, “matters of general policy…, [concerning in particular] relations between the State and religions” and also sensitive moral or bioethical issues.
In such cases the Strasbourg Court is itself has a duty “to exercise a degree of restraint in its review of Convention compliance, since such review will lead it to assess a balance that has been struck by means of a democratic process”\(^{55}\). The national margins of appreciation will tend to be narrower where there is no “common ground”\(^{56}\), or “consensus within the member States of the Council of Europe”\(^{57}\). For the principle of subsidiarity to fully exercise its regulatory qualities, it must lead the national authorities to analyse in a systematic, thorough and, if possible, preventive manner, the compatibility of the internal law with the EU safeguards. But this principle also requires from the European Court of Human Rights stable and consistent positions, an explanation of the common denominators, that is to say, of what helps achieve a consensus in Europe, and a reasonable assessment of national margins of appreciation, so that the authorities of the party States can appropriate them without hesitation or self-censorship. On each of these issues, progress is possible, even necessary, and I had the opportunity to emphasise this 30 January in Strasbourg at the Court’s start-of-year seminar.

B. Second, the **homogenisation** of fundamental rights protected by different legal systems requires a clarification of points of agreement and convergence and an adaptation of judicial reviews.

A consistent method of interpretation contributes to this objective. The national courts indeed ensure that the internal rules are interpreted in accordance with international commitments made by the country and, in particular, with the rules and principles of law of the European Union laws\(^{58}\) and the European Convention on Human Rights. The Constitutional Council\(^{59}\) and the Council of State\(^{60}\) have thus interpreted the provisions of the ordinance of 7 November 1958 concerning the implementation of the priority issue of constitutionality in accordance with the requirements of the EU law, as later confirmed by the EU’s Court of Justice\(^{61}\). Combining the methods of consistent interpretation and “acte clair”\(^{62}\), the national court also ensures the harmony of the safeguards granted by the EU law and the European Convention on Human Rights, as markedly illustrated by the National Council of Bars case.


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59 CC No. 2010-605 DC of 12 May 2010, *Law on the opening to competition and regulation of the gambling industry and online gambling*, cons. 14 and 15.
The homogenisation of rights is also ensured through the recognition of the equivalence of protections. When hearing a plea alleging the unconstitutionality of a decree to transpose a directive, the administrative courts thus carry out, in the words of Mr Guyomar a “transportation of the French constitutionality corpus to the Community legal system”64: this “translation”65 therefore leads it find out if there is a rule or a principle of the EU law which after proper implementation can guarantee the effectiveness of the constitutional rule or principle invoked. It is only in the opposite case that they directly examine the conformity of the provisions challenged under the Constitution. Such mechanisms for homogenisation of rights are also used in the dialogue undertaken by the European Supreme Courts. Thus, the Luxembourg judges refer to international instruments that the member states66 have adhered to and, in particular, the European Convention on Human Rights67 to discover general principles of law, as stated in Article 6 § 3 of the TEU. The Strasbourg courts, for their part, believe that the member state applying the EU law shall be presumed to meet the requirements of the Convention, except when an “evident inadequacy” is demonstrated68. Finally, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union each have in their article 53 a clause of agreement for the highest level of protection69.

However, there is nothing obvious70 about the mechanism of equivalence of protections, which is also found in the case law Solange of the Federal Constitutional Court of Germany. The European Court of Human Rights does not hesitate

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65 Ibid.
66 CJCE 14 May 1974, Nold, 4-73, §13.
67 CJCE 28 October 1975, Rutili, 36-75, § 32.
68 CEDH, Grand chamber, 30 June 2005, Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v. Ireland, §156; as noted by the European Court of Human Rights with regard to the United Nations Charter, “the presumption of equivalent protection aims in particular to ensure that a party State does not face a dilemma when it must invoke the legal obligations imposed on it because of its membership of an international organisation not party to the Convention” (ECHR 26 November 2013, Al-Dulimi and Montana management Inc. v. Switzerland, No. 5809/08, §116).
69 See art. 53 of the European Convention on Human Rights: “None of the provisions of this Convention shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms which may be ensured under the laws of any contracting party or under any other convention to which the contracting party is a party”; art. 53 of the Charter of Fundamental Rights of the European Union: “Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States’ constitutions.” Also, see Art.52 § 3 of the Charter: “In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law from providing more extensive protection.”
70 The administrative court itself implements, in its review of Convention compliance, similar mechanisms of presumption of conformity in the domain of asylum laws: see EC, ord. 29 August 2013, Xhafer Gashi, no.371572; CE, Ass., 13 November 2013, Cimade and Oumarov, no.349735 and 349736.
to neutralise it, when the Member States have discretionary power in the implementation of EU law. This is particularly the case for the measures for removal of asylum seekers taken within the framework of the “Dublin” regulation because of the “sovereignty clause” that it contains. In the absence of presumed equivalence, the courts must strive to use the same criteria to prohibit the dismissal of an asylum seeker to a Member State. Furthermore, when the equivalence of protections is in principle applicable, the European Court of Human Rights does not hesitate to overturn the presumption of conformity and estimates that “in such cases, the role of the Convention as a constitutional instrument of European public order in the area of human rights [must allow it to prevail] for the benefit of international cooperation.” As evidenced by the case *Michaud v. France*, such a reversal of the presumption of conformity with the Convention is not just an academic question, it shows how difficult the combination of consistent interpretation techniques, acte clair and equivalence of protections is.

C. Third, throughout the European Union, the effort of integration must be strengthened with the entry into force of the Charter of Fundamental Rights of the Union.

By extending the scope of the EU law, the scope of the Charter as interpreted by the Court of Justice coincides, with exceptions, with the general principles of the EU law and, in doing so, it corresponds directly and sometimes frontally to the rights protected by other treaties as well as the constitutional safeguards of Member States. Under these conditions, the risks of divergence and “disharmony” between the EU law and the European Convention on Human Rights have intensified as the Court of Justice did not hesitate to retain an “independent” conception of the principles protected by these two treaties. The *Åkerberg Fransson judgment* is a remarkable illustration of this fact: the courts of Luxembourg and Strasbourg use the same criteria for assessing the criminal nature of a tax penalty; however, the former, differentiating itself from the latter, makes the application of the principle *non bis in idem* conditional, as set out in Article 50 of the Charter of Fundamental Rights, on “the remaining penalties being effective, proportionate and dissuasive.” Furthermore, the combined application of the EU law and the constitutional safeguards of Member States was strictly governed by the *Melloni* decision made the same day by the Court of Justice. Thus, when an act of the EU law calls for national implementation measures, the Court

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71 Regarding a decision for dismissal to Greece, see: CEDH, Grand chamber, *M.S.S. v. Belgium and Greece*, no.30696/09, §358; regarding a decision for dismissal to Italy, see: CEDH, Grand chamber, 4 November 2014, *Tarakkel v. Switzerland*, no.29217/12, §120-122.

72 This is not always the case: according to the Court of Justice, only “systemic failures” may justify the decision not to carry out a “Dublin” transfer: on this point, see ECJ 21 December 2011, *N.S. v. Secretary of State for the Home Department*, C-411/10, §85.


75 Refer to the extensive interpretation adopted by the Court of Justice in its CJEU judgment, Grand Chamber, 26 February 2013 *Åkerberg Fransson*, C-617/10.

76 Regarding the scope of Article 41 of the Charter, see: ECJ 17 July 2014, *YS*, C-141/12, § 67; the right to be heard, enshrined in this article, however, is an “integral part of respect for the rights of defense, general principle of EU law”: see on this ECJ November 5, 2014, *Sophie Mukarubega*, C-166/13, § 45; ECJ 11 December 2014, *Khaled Boudjlida*, C-249/13, § 34.


78 CJEU, Grand chamber, 26 February 2013, *Åkerberg Fransson*, C-617/10, § 36.

79 CJEU, Grand Chamber, 26 February 2013, *Stefano Melloni*, C-399/11.
of Justice considers that if “the national authorities and courts are able to apply national standards of protection of fundamental rights”, it is on the double condition that “this application does not compromise the level of protection provided by the Charter, nor the primacy, unity and effectiveness of the Union law” 80. When this last condition is not met, the national standard, be it the most protective, be it constitutional, must be rejected.

The defence of an independent European legal system is thus likely to generate new frictions in the Member States as in the Council of Europe, while the prospect of adherence of the Union to the European Convention on Human Rights appears less evident, if not uncertain, following the opinion of the Court of Justice given in December81.

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The history of relations between legal systems could be written in the manner of war chronicles: “we could recount the succession of battles and, for each of them, the nature and disposition of forces involved (…), the tactics of each party and the use by these parties of fire and movement”82. If we succumb to this temptation, it would not be certain if we would make any progress in understanding and regulating a globalised law: we would be like the hero of Stendhal, Fabrice del Dongo, on the battlefield of Waterloo, who was subjected to trial by fire, without understanding anything and as a stranger to the very history of which he is a witness83. The grand and structured view that Victor Hugo has illustrated on Waterloo in Les Misérables84, would be out of reach for us. At best we could, like Chateaubriand in Les Mémoires d’outre-tombe, perceive the distant echoes of this battle and be lost in our thoughts of the end of destinies85. However, we must be wary, even in this bicentennial year of the fatal battle, at least for us French, of this temptation and these escapades into the chronicles of war, which would be no more than dead ends. If we must take the rivalries, the clashes or even quasi-conquering aspirations of certain legal systems or orders seriously - I am thinking especially of the extraterritorial effects of certain national laws - it is necessary not to be locked in an insular and non-cooperative stance, which would be ineffective and necessarily put us at a disadvantage. Instead, we must resolutely adopt an approach of shared sovereignty, which preserves both legal diversity and the core of national constitutional identities as well as the opportunities for harmonious cooperation between legal systems. I have no doubt that this conference will allow us to establish useful diagnostics, open perspectives and foresee pragmatic solutions. Through this effort, our country and our judicial system, from the Constitutional Council to the Court of Cassation including the Council of State, will be able to speak in one voice and seek

80 CJEU, Grand Chamber, 26 February 2013, Stefano Melloni, C-399/11, § 60; see also, the obiter dictum of the Åkerberg Fransson judgment of the same day: CJEU, Grand chamber, 26 February 2013, Åkerberg Fransson, C-617/10, § 29.
81 CJEU, Plenary Assembly, 18 December 2014, opinion 2/13; on this point, see, H. Labayle and F. Sudre, “The opinion 2/13 of the Court of Justice on the accession of the EU to the European Convention on Human Rights: Pavane for a dead membership?” RFDA, 2015, p.3.
83 Stendhal, La Chartreuse de Parme, chapter III.
84 V. Hugo, Les Misérables, part II, book 1, chapter 9, “Waterloo”.
a harmonious combination of legal systems for the benefit of the rule of law, a re-founded by preserved sovereignty and the European project.