

**European Court of Human Rights and national Courts: the case of Nagoya
Protocol, vegetable patents granted under the Regulation (EU) n. 511/2014**

Valentina Colcelli¹

Abstract: The paper aims to demonstrate the existence in Europe area, the reciprocal influence among legal systems through cooperation among the national and supranational Courts. For the purpose of this paper, having access to remedies provided by European Court of Human rights (ECtHR), which covers the circulation of juridical models among the legal systems of States, it is central. The national Courts are influenced by the European Court of Human rights (ECtHR), which obliges Member States to guarantee the protection of individuals' fundamental rights. The application of the Nagoya protocol in the European Union it's one of the examples of reciprocal influence above mentioned. It is somewhere able to reverse the traditional Civil law "ubi jus ibi remedium" and creating a Continental version of "ubi remedium ibi jus".

Summary: 1 - Introduction. 2 - Existing dichotomy between Intellectual Property (IP) and Fundamental Rights. The specific role playing by European Court of Human rights (ECtHR) jurisprudence on IP in the EU legal system. 3 - Due diligence and an information-recognised certificate for compliance, as well as full information on genetic material and resources address how to apply for a vegetable patent under the aims of Regulation (EU) 511/2014. 4. - Implementing Traditional knowledge as Fundamental Rights in the European Union legal system. 5 - Conclusion.

1 - Introduction.

The paper aims to demonstrate the existence in Europe area the phenomenon of the reciprocal influence among legal systems through cooperation among the national and supranational Courts. It is somewhere able to reverse the traditional Civil law "ubi jus ibi remedium" and creating a Continental version of "ubi remedium ibi jus". The application of the Nagoya protocol in the European Union it's one of the examples of reciprocal influence above mentioned.

Due to the supremacy of EU law and the process of harmonisation of EU citizens' rights, the legal systems of Member States are directly influenced. In the areas of rules that are part of the EU harmonisation process, this competition is striking². However, competition among the legal systems of Member States influences them also indirectly. The Individual rights are influenced by the International Convention, which obliges Member States to guarantee the protection of individuals' fundamental rights. One example of such circulation is the jurisprudential interpretations realized by the European Court of Human rights (ECtHR) that concretes the phenomenon of the reciprocal influence among legal systems and the cooperation among the courts within the area of European Convention of Human Rights (ECHR).

¹ **Valentina Colcelli**, is Researcher of National Research Council (Italy), Module Leader J. Monnet European EuPlaw, Member of Managing Board Jean Monnet Centre of Excellence Research and Science (R&S), Ph.D. This research has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie, Grant agreement No 645595.

² See Opinion of Advocate La Pergola in ECJ 9 March 1999, *Centros Ltd v Erhvervs- og Selskabsstyrelsen*. Case C-212/97, [1999] ECR, p. I-01459, 20: "En l'absence d'harmonisation, en somme, c'est la concurrence entre systèmes normatifs («competition among rules») qui doit pouvoir s'exercer librement".

For the purpose of this paper, having access to remedies provided by the above-mentioned International Convention, which covers the circulation of juridical models among the legal systems of States³, it is central.

Within European Union legal system, a gradually reversing the traditional Civil law *ubi jus ibi remedium* and creating a “non-UK” version of *ubi remedium ibi jus* it is possible, starting from how applying for the vegetable patent under the light of the aims of the Regulation (EU) 511/2014.

The Regulation (EU) 511/2014 regards the measure for users on “Access to Genetic Resources and the Fair and Equitable Sharing of Benefits”. It rules how the Nagoya Protocol is entered in force in European Union legal system.

Local community, native populations conserve biodiversity and traditional knowledge associated with genetic resources. For research, business and development purposes, academic researchers, companies and business sectors (as food and beverage industries, pharmaceuticals, plant and animal breeding, etc.) use genetic resources and traditional knowledge associated of them.

The paragraph n. 2 evokes the existing dichotomy between Intellectual Property and Human Rights under the ECtHR jurisprudence.

Finally, to achieve paper’s goal, the paragraph n. 4 aims to ascertain how claiming the European Court of Human Rights in order to evaluate the legitimating of the EU vegetable patents granted, if EU vegetable patents do not comply with the 2015, Regulation (EU) 511/2014, as stated in the paragraph. 3. As matter of fact in the paragraph 4 recalls how to apply for a vegetable patent complying to aims of reg. EU n. n. 511/2014.

The paragraph n. 5 concludes comparing the issue of the paper to the case of protection introduced by the Consumers’ Code⁴, which seem to borrow the same tendency to identify *remedium* with jus from Common Law.

2 - Existing dichotomy between Intellectual Property and Human Rights. The specific role of the ECtHR jurisprudence on IP in the EU legal system.

Multinational trademarked full use of the traditional knowledge, but the local community, farmers and indigenous persons do not give a conscientious assent expressed by a decent remuneration from Multinational beneficiaries of their knowledge⁵. As the matter of fact inside the iniquity approach there is the abusive exploitation of the traditional knowledge that has wickedness, which is not politically or ethically correct. The iniquity approach above mentioned is amplified by the Multinational Firms common behaviours, which are able to obtain (also in EU legal system) patent protection or other forms of intellectual property rights (trademark, utility model, short-term patent, plant variety right) made from traditional knowledge or genetic sources.

Recent concerns have grown with regard of the rights over traditional knowledge of indigenous communities and local community. Responding to this need, the international community has developed a small but specific *corpus iuris* to protect and ensure the rights of indigenous peoples that interprets general Human Rights Law Standards under the views and beliefs of most indigenous groups and local community.

This issue is closely related to the existing dichotomy between Intellectual Property (IP) and Human Rights.

3 R. HELFER, ‘Forum shopping for human rights’, Univ. Penn. Law Rev., 1999, p. 285.

4 Legislative Decree no. 206, dated 6 September 2005, Foreword of the Minister to the Consumer’s Code: “The Consumers’ Code is a fundamental reference law covering the protection of consumers’ and users’ rights. The need to collect all consumer protection legislation into a Consolidated Act could not be delayed any further, in view of the stratification of law and the experience of other European Union member states. For the first time, this Code gives consumer rights their own importance in legislation, and it is based upon theories about the purchase process. The Code brings together, coordinates, and simplifies current enacted law as it regards consumers, citizens aware of their rights and duties”.

5 P. DUTFIELD, Sharing the benefit of Biodiversity. Is there a role for the Patent System?, WTO, Trade and the Environment, G. P. Sampson, J. Whalley (eds), Cheltenham, 2005, 513.

Existing IP regime seems inadequate to protect traditional knowledge of indigenous peoples and legitimising the usurpation of knowledge and natural resources solely for commercial purposes.

In the European area the dichotomy will be composed by the ECtHR jurisprudence. European Court of Human Rights addresses the issue of protecting IP rights under Human Rights Law.

Particular attention is posed by increasing the benefits for the local communities that traditionally maintain biodiversity and traditional knowledge, under the light of Article 1 Protocol No. 1 of ECHR, which protects the right to “the peaceful enjoyment of one’s possession”.

“The European Court Human Rights has frequently used the existing international IP norms as *lex specialis* to understand the State’s obligation under Article 1 of Protocol No. 1 to the European Convention” It outsets that intellectual property as such undeniably attracted the protection of Article 1 of Protocol No. 1 of ECHR.

As matter of fact, in the case of *Anheuser-Busch Inc. v. Portugal*⁶, the point in issue was to ascertain when the right to protection of the trade mark became a “possession” within the meaning of the provision Article 1 of Protocol No. 1 of ECHR. In *Melnychuk v. Ukraine*⁷, which concerned an alleged violation of the applicant’s copyright, the European Court Human Rights restated that Article 1 of Protocol No. 1 was applicable to intellectual property.

In this framework, at least, IP rights could serve to exercise many fundamental rights of local community ad indigenous people to protect its genetic resources and traditional knowledge. While the jurisprudence on this matter is not vast, it has served to illustrate how IP can generate claims under the European Convention Human Rights when holding that patents, trademarks, copyrights, and other economic interests in intangible knowledge goods are protected by the European Convention’s right of property.

“A patent is a possession for the purposes of Article 1 of Protocol No 1”⁸. In *Lenzing AG v. the United Kingdom*⁹, the European Court Human Rights clarified that the “possession” was not the patent as such, “but the applicant company’s right to pursue a legal claim in the domestic courts. The Commission recalls the Convention case-law according to which the “possessions” may include claims”¹⁰. The Commission notes that the applicant company “was able to pursue its claim in the national courts” and had a full hearing that decided on the powers of national authority on IP. Thus, “there was therefore no interference with the applicant company’s right to have its claim heard in the domestic courts and therefore no appearance of an interference within the meaning of Article 1 Protocol No. 1 of ECHR”¹¹.

European Court Human Rights in several judgements points out “that the concept of “possessions” in the first part of Article 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision”¹². For instance it concerns: credit; income; good-will and *espérance légitime*¹³.

It is clear, therefore, how the scope of the Article 1 Protocol No. 1 of ECHR is truly extensive, including any measure that involves a legal situation regarding goods. Genetic resources and traditional knowledge represent a mix of private and public characteristic. Thus, they could be treated as impure public goods.

6 ECtHR 11 January 2007, Application n. 73049/01.

7 ECtHR , *Melnychuk v. Ukraine* (dec.), no. 28743/03, ECHR 2005, IX.

8 ECtHR *Lenzing AG v. the United Kingdom* n. 38817/97, Commission decision of 9 September 1998, [http://hudoc.echr.coe.int/eng#{"appno":\["38817/97"\]}](http://hudoc.echr.coe.int/eng#{) and also see no. 12633/87, Dec. 4.10.90, D.R. 66, p. 79.

9 See ECtHR *Lenzing AG v. the United Kingdom* n. 38817/97, cited.

10 ECtHR *Pressos Compania Naviera S.A. and Others v. Belgium* judgment of 20 November 1995, Series A no. 332, p. 21, para. 31.

11 ECtHR, *Melnychuk v. Ukraine* (dec.), no. 28743/03, ECHR 2005, IX; ECtHR, *Breierova and Others v. the Czech Republic* (dec.), no. 57321/00, 8 October 2002.

12 ECtHR *Iatridis v. Greece*, no. 31107/96, § 55, ECHR 1999-II

13 See V. COLCELLI comments of ECtHR on [https://diritti-](https://diritti-cedu.unipg.it/index.php?option=com_content&view=section&id=25&Itemid=113&lang=en)

[cedu.unipg.it/index.php?option=com_content&view=section&id=25&Itemid=113&lang=en](https://diritti-cedu.unipg.it/index.php?option=com_content&view=section&id=25&Itemid=113&lang=en)

The jurisprudence of ECHR is particularly important because it sets standards that determine when a particular IP - related claim can raise to the level of a human right violation that entitle the applicant to a just reparation, according with prevision under Regulation (EU) 511/2014.

Under the art. 4 Regulation (EU) 511/2014 a problem occurred regarding the correct interpretation of documents requesting a patent for vegetables.

3 - Due diligence and an information-recognised certificate for compliance, as well as full information on genetic material and resources address how to apply for a vegetable patent under the aims of reg. EU n. n. 511/2014.

The paragraph will study how applying for the vegetable patent under the light of the aims of the Regulation (EU) 511/2014 despite no apt coordination between the Regulation itself and the system for the protection of plant variety rights established by European Union legislation.

As matter of fact, European Union law contains various instruments designed to regulate and protect intellectual property, including trade marks. The instrument of most relevance to the present case is Council Regulation (EC) No. 40/941 of 20 December 1993 on the Community trade mark, which establishes a right to a Community trade mark and confers certain rights on applicants for registration. Its aim is to promote the development, expansion and proper functioning of the internal market by enabling Community undertakings to identify their products or services in a uniform manner throughout the Union. To that end, the Office of Harmonisation for the Internal Market (OHIM) has been established (for trade marks and designs – Article 2). It is based in Alicante (Spain). Applications for registration of a Community trade mark are sent to the OHIM, which decides whether to grant or reject them. An appeal lies against its decisions to the OHIM's Board of Appeal, and from there to the Court of First Instance of the European Communities (Articles 57-63). Article 24 of the Regulation, which is entitled "The application for a Community trade mark as an object of property", lays down that the provisions relating to Community trade marks also apply to applications for registration. These provisions include Article 17 (Transfer), Article 19 (Rights in rem), Article 20 (Levy of execution) and Article 22 (Licensing). By virtue of Article 9 § 3, an application for registration may also found a claim for compensation.

Finally, Article 17 § 2 of the Charter of Fundamental Rights (Article II-77 of the draft Treaty establishing a Constitution for Europe, signed on 29 October 2004, but not yet in force), which guarantees the right to property, provides: "Intellectual property shall be protected."

Art. 4 Regulation (EU) 511/2014 is now entered into force, a problem occurred regarding the correct interpretation of documents requesting a patent for vegetables. Particular attention will need to be posed by the use of benefit-sharing tools on the new varieties that are derived from the traditional plant material and traditional knowledge, with the view to increase the benefits for the local communities that traditionally maintain the selected.

Users (art. 3, point 4), Regulation (EU) 511/2014 have to exercise due diligence to ascertain the genetic resources and traditional knowledge associated with them.

Art. 4 Regulation (EU) 511/2014 explains what users must do in order to comply with the purpose to fulfil "due diligence" in their own activities linked with genetic resources ascertain: transferring and keeping of genetic resources, also for food and agriculture not contented under the Annex I of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), require the presence of international- recognised certificate of compliance.

According with the point 21 of the Regulation (EU) 511/2014, "genetic resources have been accessed by applicable legal or regulatory requirements and to ensure that, where relevant, benefits

are fairly and equitably shared”. In that context, it is relevant that the user has “internationally-recognised certificates of compliance as evidence that the genetic resources covered were legally accessed and that mutually agreed terms were established for the user and the utilisation specified therein” (point 21), and also national authorities reckoned them.

Where no international certificate exists, documents and information have to be verified by the users (Regulation (EU) 511/2014). Also, regulation stated users have to declare and provide evidence that they have exercised due diligence when requested.

Due diligence and an information-recognised certificate for compliance, as well as full information on genetic material and resources that pay the attention to and address how to apply for a vegetable patent under the aims of Regulation (EU) 511/2014.

It is relevant to underline point 25 of the Regulation (EU) 511/2014 which affirms that one suitable point for such a declaration is when research funds are received, and also at the final stage of utilisation. This means at the stage of final development of a product before requesting market approval for a product developed via the utilisation of genetic resources or traditional knowledge associated with such resources, or, where market approval is not required, at the stage of final development of a product before first placing it on the Union market.

Also if - in accordance with Article 291(2) TFEU - the already mentioned point 25 underlines the need to implement the power of the EU Commission to determine the stage of final development of a product, in accordance with the Nagoya Protocol, the system for the protection of plant variety.

Reg. EC n. 2100/94 of 27 July 1994 on Community plant variety rights, reg. EC n. 1238/95 of 31 May 1995 that establishes rules for the application of the fees payable to the Community Plant Variety and Reg. EC n. 1768/95 of 24 July 1995 for implementing rules on the agricultural exemption built the system for the protection of plant variety rights established by the European Union. The legislative framework above mentioned allows intellectual property rights, valid throughout the EU, to be granted for plant varieties.

Without waiting for the Commission power implementation, how to apply for the vegetable patent under the light of the aims of the Regulation (EU) 511/2014 could be realized: vegetable patent will be no grant if the due diligence in the documents required for applying for vegetable plants patents is not provided and it would produce a nullity of the bad patent if granted.

4 – Implementing Traditional knowledge as Fundamental Rights in the European Union legal system.

According with in the EU legal system a *remedium* for bad patents in EU legal system, exists: each EU State member or/and each person can claim the European Court of Human Rights in order to evaluate the legitimating of the vegetable patents granted in the EU legal system if they do not comply with the Nagoya Protocol.

May the fundamental “*ius*” of the rights of protection of legal tradition be able to be declared?

The concept of “possessions” referred to in the first part of Article 1 Protocol No. 1 of ECHR has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1¹⁴.

Article 1 of Protocol No. 1, which guarantees the right to the protection of property, contains three distinct rules: “the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain

¹⁴ See Iatridis, § 54, Beyeler, § 100, both cited above, and Broniowski v. Poland [GC], no. 31443/96, § 129, ECHR 2004.

conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest ... The three rules are not, however, ‘distinct’ in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule”¹⁵ .

This hypothesis strengthens the scholar’s studies¹⁶ on the nature of genetic resources and traditional knowledge as juridical goods protected by ECHR, by the Article 1 Protocol No. 1 of ECHR.

Genetic resources and traditional knowledge could be qualified as “goods” protected by the Article 1 of the First Additional Protocol of European Convention on Human Rights. It is clear, therefore, how the scope of the cited article is truly extensive, including any measure that involves a legal situation regarding goods¹⁷. Genetic resources and traditional knowledge represent a mix of private and public characteristic. Thus, they could be treated as impure public goods.

By case-laws of the European Court for Human Rights, the notion of goods protected by the law has a broad meaning. It is not limited to the ownership of material goods, and it does not only cover private ownership rights but extends to public benefits¹⁸ and entitlements like genetic resources and traditional knowledge.

The nature of the goods, and the increasing resource complexity as well as the changing roles for the State is usually analysed because it is challenging to understand the introduction of adaptive ecosystem governance¹⁹.

5 – Conclusion

The above consideration strengthens the consideration that application of the Nagoya protocol on European Union legal system realizes a continental tender of *ubi jus ibi remedium*.

The reference is to the systems of protection introduced by the Consumers’ Code²⁰, which seem to borrow the tendency to identify *remedium* with jus from Common Law.

The legal systems of EU Member States must acknowledge many EU rules, which have first regulated the internal market²¹ and then the subjects of that market. For instance In Italy, decree no. 206/2005 acknowledged the Directives on consumer protection²². This paragraph succinctly assesses whether, in the Italian legal system, the invalidity of unfair terms or nullity for protection

¹⁵ See James and Others v. the United Kingdom, 21 February 1986, § 37, Series A no. 98, in which the Court reaffirmed some of the principles it had established in its judgment in Sporrong and Lönnroth v. Sweden, 23 September 1982, § 61, Series A no. 52.

¹⁶ S. VEZZANI, Il Primo Protocollo alla Convenzione europea dei diritti umani e la tutela della proprietà intellettuale di popoli indigeni e comunità locali, in *Diritto Umani e Diritto Internazionale*, 1, 2007, 305 - 342.

¹⁷ V. COLCELLI, The problem of the legal nature of green certificates in the Italian Legal System, in *Energy Policy*, 40, 2012, 301-306.

¹⁸ ECHR, Woonbron Volkshuisvestingsgroep & Others v the Netherlands, 47122/99/18-6-2002.

¹⁹ A. SANDBERG, Property rights and ecosystem properties, in *Land Use Policy*, 24, 2007, 613– 623.

²⁰ Legislative Decree no. 206, dated 6 September 2005, Foreword of the Minister to the Consumer’s Code: “The Consumers’ Code is a fundamental reference law covering the protection of consumers’ and users’ rights. The need to collect all consumer protection legislation into a Consolidated Act could not be delayed any further, in view of the stratification of law and the experience of other European Union member states. For the first time, this Code gives consumer rights their own importance in legislation, and it is based upon theories about the purchase process. The Code brings together, coordinates, and simplifies current enacted law as it regards consumers, citizens aware of their rights and duties”.

²¹ W. G. FRIEDMANN, Some reflections on status and freedom, *Essays in honour of Roscoe Pound*, Indianapolis, 1962, p. 222 ss. And see Resolutions of EU Council: (O.J. C 92/1, 1975), (O.J. C 133/1, 1981), (O.J. C 167, 1986); see also European contractual law Com (2001) 398 def.; protection of consumers’ and users’ rights (Com/2002 208 def.) and the Green Book (Com/2001 531 def.).

²² Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees; Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts; Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees; Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.

of consumers (Art. 36), right of withdrawal (Art. 64) and free of charge by repair or replacement (Art. 130) represent the typical approach of Common Law remedies²³.

Thus, in the European context of a growing circulation of juridical models, the aim of the present work is to confirm that Arts. 36, 64 and 130 of the Italian Consumers' Code may be viewed as remedies, having their own autonomous and specific logic distinct from similar rules in the Italian Civil Code.

Italian jurists have been used to thinking in a binary manner, about positive rights, as expressed in rules, and judiciary actions for their protection. But the requirement to conform to EU law in a juridical model of remedies now faces the Italian legal system. This model requires attention to the real application of the rules through the work of the judiciary, and not only the enunciation of the right in the rules. In this sense, Arts. 36, 64 and 130 of the Consumers' Code are new to the Italian tradition of civil law²⁴.

To refer to remedies in the Italian legal system means asking - in extremely practical terms, before judiciary action - whether, together with rights and actions, there are instruments which positive law offers in order to translate choices in the allocation of rights made by the legislator into concrete terms²⁵.

In the Italian legal system, remedies are instruments placed between individual rights and actions for claims. Arts. 36, 64 and 130 of the Consumers' Code are not actions, because they are not made available to consumers only in order to have a decision from a judge. They are not rights because they provide a *quid pluris*, something more clearly defined than to those of consumers. Art. 2 of the Consumers' Code defines consumer's rights: they are antecedent to remedy and action. Art. 2 is the moment in which the law defines the allocation of individual rights²⁶.

Other example of such circulation is the new jurisprudential interpretation of the right to privacy studied by O'Callaghan. The right to privacy originated in the Common law legal system and, from this tradition, entered the European Convention of Human Rights through the interpreted activity of its International Court. From here, privacy penetrated legal tradition - like that of the Italian legal system - which had never previously considered it. Now it is a part of the common juridical ground which the EU legal system uses to construct itself²⁷. Furthermore, the right to privacy has passed from the judgements of the European Human Rights Court in Art. 8 ECHR, into the English legal system via Human Rights Act of 1998. Patrick O'Callaghan called "*Reversing ubi remedium ibi jus in the common law: the right of privacy*"²⁸. In private law, the traditional approach of the Common Law is to place remedies before rights. O'Callaghan examines the current status of the remedy-orientated approach in Common Law in England. English Courts appear to be changing the remedy approach. One result of possible change is the right to privacy enshrined in the ECHR. The author outlines how a new jurisprudential interpretation of the right to privacy is gradually reversing the traditional *ubi remedium ibi jus*, and is creating a Common Law version of *ubi jus ibi remedium*. Some judgements²⁹ reveal the current tendency of the courts: first, the court proceeds to examine whether, on the facts of the case, an invasion of privacy has taken place, as opposed to first

23 A. DI MAJO, 'Il linguaggio dei rimedi', EeDP (Europa e diritto privato), 2, 2005, p. 341-363.

24 S. MAZZAMUTO, 'I rimedi', C. CASTRONOVO, S. MAZZAMUTO (eds.), *Manuale di diritto privato europeo*, Milano, II, 2007.

25 U MATTEI, 'I rimedi', R. SACCO (ed.), *La parte generale del diritto civile 2, Il diritto soggettivo*, Torino, 2001, p. 107.

26 Art. 2, Consumers' Code: Consumers' rights 1. The individual and collective rights and interests of consumers and users shall be recognised and guaranteed, their protection shall be promoted at national and local level, also collectively and in the form of associations, measures designed to pursue such aims shall be encouraged, also through the regulation of relations between consumers' and users' associations and public authorities. 2. The following shall be recognised as fundamental rights of consumers and users: a) health protection; b) the safety and quality of products and services; c) adequate information and correct advertising; d) consumer education; e) fairness, transparency and equity in contractual relations; f) the promotion and development of free, voluntary and democratic associations between consumers and users; g) the supply of public services according to standards of quality and efficiency."

27 V. COLCELLI, *Riservatezza e trattamento dei dati personali nella normativa dell'Unione europea*, A. PALAZZO A. SASSI (ed.), *Diritto privato del mercato*, Perugia, 2007, p. 457 ss.

28 P. O'CALLAGHAN, *Reversing Ubi Remedium ibi jus in the common law: the right of privacy*, ERPL (European Review of Private Law), 5, 2007, p. 659 ss.

29 Cfr. *Douglas v. Hello* (n.3), in Q.B., 2006, 125; In Res (Achild), in A.C., 2005, 1, 593.

ascertaining whether or not the claim falls within the boundaries of an existing cause of action. The reference is to the Campbell³⁰ judgement. Here privacy is defined by the court as “reasonable expectation that the information in question will be kept confidential”. In the opinion of O’Callaghan, the tendency to define the scope of interest protected by the rule *in prima facie*³¹ is borrowed from the tradition of the Court of ECtHR³². Since A v. B, English judges have stated that, after the Human Rights Act 1998, it is necessary to define the scope of interest protected by Art. 8 ECHR as a reversal of the traditional approach of Common Law³³.

30 Campbell/ MGN, in A.C., 2004, 457.

31 See again P. O’CALLAGHAN, Reversing Ubi Remedium ibi jus in the Common law: the right of privacy, op cit, 659 ss.

32 McKennit, EWHC, 2005, 3003: “ ... [it is] far from clear that the House of Lords that decided Campbell would have handled von Hannover in the same way as did the EctHR”.

33 Cfr A v. B, Q.B., 2003, 195 ss, in which Lord Wolf stated: “authorities which relate to the action for breach of confidence prior to the coming into force of the 1988 Act (...) are largely of historic interest only”.