

**Sevostianova N. I.**

*National University «Odessa law Academy»,*

*PhD, Lecturer at the department of international law and international relations*

## **THE ACCESSION OF THE EUROPEAN UNION TO THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS: GENESIS, PRO AND CONTRA**

The debate about the desirability of the European Union being legally bound to respect human rights has been ongoing for decades. It is not very strange that in 1957, when the European Economic Community was founded, human rights were not at the forefront of people's minds. Article 2 of the EC Treaty, which states that the Community's objective is to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, a high degree of convergence of economic performance, a high level of employment, sustainable and non-inflationary growth, a high degree of competitiveness, and so forth. None of these objectives leads directly to think of the need to safeguard human rights standards. This was also reflected in the early case law of the European Court of Justice (ECJ)—the *Stork*, *Geitling* and *Sgarlata* cases for instance, in which the Court refused to consider the application of human rights standards, since they were not explicitly based on any article of the Treaty (C-1/58, *Stork – High Authority*, [1959] ECR 17; C-36, 37, 38 and 40/59, *Geitling – High Authority*, [1960] ECR 423 and C-40/64, *Sgarlata – Commission*, [1965] ECR 215). With the passage of time, however, came a growing awareness that even in the case of ever closer economic cooperation, human rights standards might come under pressure. Especially Member States with a constitutional tradition, such as Germany, found it intolerable that such a powerful organization was not formally obliged to operate within certain policy limits. Therefore some national courts reserved the right to declare Community law inapplicable if they deemed it incompatible with domestic constitutional provisions. Partly out of fear that such rulings might undermine the supremacy of Community law, the Court of Justice of the European Community started to emphasize the obligation to observe human rights in its own rulings. Finally, in the *Nold II* judgment, the Court held: «As the Court has already stated, fundamental rights form an integral part of the general principles of law, the observance of which it ensures.» (C-4/73, *Nold II*, [1974] ECR 508, consideration 13). Since the European Communities did not have their own catalogue of human rights, the Court of Justice was compelled to seek inspiration elsewhere. Article F (later article 6 of the Treaty on European Union) states that the Union «shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms». But in Germany, in particular, there was a persistent sense of unease that an organization as powerful as the European Union did not have its own binding catalogue of human rights and on the 7th of December 2000, at the European Council in Nice, the European Charter of Fundamental Rights was proclaimed. The main drawback of the new human rights instrument was that not everyone was convinced that the Charter should

be legally binding. It was objected that the definition of certain rights was too general; that there was only one general limitation clause; that certain rights were worded differently, for some inexplicable reason, from similar rights in the ECHR and other human rights instruments. The Charter existed, and the Court of Justice started unobtrusively citing it. And in due course, the Lisbon Treaty invested the Charter with this legally binding status. On 1 December 2009, the Charter acquired the same legal status as the Treaties. Thus we have gone from a position of steering clear of human rights in the 1950s, to a home-grown catalogue of human rights, in 2000 (Reding V. The EU accession to the ECHR: towards a stronger and more coherent protection of human rights in Europe // European Commission responsible for Justice documents, Speech at the Brussels conference, 18 March 2010, P.5).

The idea that the EU should accede to the ECHR is certainly not new. It was first proposed by the Commission in 1979. In 1990 the Commission repeated its proposal, in a Communication to the Council. On 30 November 1994, the Council – consisting in this case of the justice ministers – decided to seek the advice of the Court of Justice. The result was Opinion 2/94, in which the ECJ advised against accession. Or rather, the Court observed that accession was impossible in the light of Community law as it existed at the time, since there was no firm legal basis for it. This did not mean that the issue disappeared from the agenda altogether. Those in favor of accession continued to point out the ways in which accession would enhance the coherence of the system of legal protection in the European region. However, two concerns in particular had to be addressed: (a) that the EU's accession would subject EU Member States to supplementary obligations under the ECHR; and (b) the notion that accession to the ECHR had become unnecessary after the proclamation of the Charter as the EU's own catalogue of fundamental rights.

Firstly, accession would significantly improve the legal protection of EU citizens. Secondly, accession would minimize the risk of the two courts arriving at diverging interpretations of human rights standards. Such divergences were already occurring, but their frequency might well increase if the ECJ were to take less account of the European Court of Human Rights (ECHR) case law. Lastly, the existence of an external touchstone may be deemed desirable in itself.

In the debate about the EU's accession to the ECHR, two other matters are raised which supposedly militate against it. The first is the fact that the EU now has its own Charter of Fundamental Rights. If the implication is that the Charter's adoption has rendered accession to the ECHR redundant, this can be refuted by the points outlined above. In my view, the presence of a sound internal infrastructure to safeguard human rights does not detract from the desirability of external scrutiny.

At this moment the EU's accession to the ECHR is a political and legal reality. Protocol 14, which was recently ratified by all Member States, includes an article that provides for the possibility of accession: «The European Union may accede to the Convention». It is a fact that the Lisbon Treaty and the entry into force of the 14th Protocol to the ECHR cleared the way for the actual negotiations between the European Union and the Council of Europe on the modalities of accession to begin.