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THE FORMATION OF THE HUMAN RIGHTS PROTECTION MECHANISM ON THE EU SUPRANATIONAL LEVEL: LEGAL AND POLITICAL ASSESSMENT

This paper stipulates the development of the human rights protection on the EU level which is traced back to the 1950-s when European Communities emerged. It is argued that human rights protection system was a logical consequences of the development of the interstate integration in other fields which created proper prerequisites for the increase in human rights protection.

Key words: *sui generis, human rights protection, primacy of the European Union Law, ECJ's activism.*

During the last several centuries, the European Continent went through dramatic changes which changed the pace of its development. The industrial revolution which took place in the XIX century led to the fostering of cooperation between European states which resulted in the creation of the different economic arrangements such as free trade areas and customs union. But the expansionist policy of the European monarchies led to the World War I and to the total disruption of the interstate trade. Besides, states tried to erect as many new barriers as it was possible preventing the free flow of goods, services, and workers cross borders. Such situation lasted till the end of the World War II, after which all European states found themselves in the economic devastation. Furthermore, state institutions were fully delegitimized due to their collaboration with Nazi regime.

On May 5, 1949 there had been created the Council of Europe. Despite the broad scope of its goals, soon it became clear that the activities of this organisation wouldn't go beyond human rights issues too far, because the Council of Europe lacked institutional capacity to adopt effectively. Even the preamble of its Statute contained such provisions as: '...an organisation which will bring European states into closer association' and ...'closer unity of all like-minded countries' [10] which proved that signatory states foresaw this organisation as purely international rather supranational and wanted to concentrated on closer association and not on the creation of the unity. The major achievement of the Council of Europe is still considered to be the Convention for the Protection of Human Rights and Fundamental Freedoms, which was signed on November 4, 1950 [9].

The strong desire to recover boosted among peoples of Europe the sentiment towards the unification. But still, the size and scale of the integration remained open. It was understood that despite all benefits, almost all European states did not want to give up their sovereignty to the sake of the common goals. That's why, the idea to create an economic organization among European states prevailed over the plans for military and political integration.

That's why on April 18, 1951 the Treaty Establishing Coal and Steel Community (henceforth – TCSC) was signed by France, Germany, France, Italy, Belgium, Luxembourg, Netherlands. In contrary to the Statute of Council of Europe, the preamble of the TCSC recognised that '...Europe can be built only through practical achievements which will first of all demonstrate real solidarity, and through the establishment of common bases for economic development.....the basis for a broader and deeper community among peoples along, divided by bloody conflicts; and to lay the foundations for institutions which will give direction to shared destiny henceforward ...' [8].

So, representatives of member-states, consulted by French politician Jean Monnet, envisaged that strong economic foundation will cause a 'spill over effect' and soon economic integration will lead to political and military integration with the gradual increase in human rights protection. The main argument behind this idea was the fact that tense economic collaboration between states would eventually lead to similar processes in others. Furthermore, American Professor H. Mason considered the creation of the European Coal and Steel Community (henceforth – ECSC) as an 'only road of the survival of the Creco-Cristian civilisation' [15, P. 5].

Inspired by the success of the ECSC, J. Monnet offered the creation of the European Defence Community (henceforth – EDC) and the European Political Community (henceforth – EPC) which was supposed to be a general framework for both ECSC and EDC. Article 2 of the Draft Treaty embodying the statute of the European community stipulates that one of the primary goals for the Community is the contribution towards the protection of human rights and fundamental freedoms. Besides, the Part 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms are supposed to be considered as an integral part of the Draft Treaty (Article 3). It is worth noting that Part 1 outlines rights and freedoms secured by Council of Europe. Furthermore, the Draft Treaty also provides for the 'human rights test' in order to secure that human rights are protected in the European State which was deemed to express the will to join EPC (Article 118) [7]. Unfortunately, due to the failure of the ratification of the European Defence Community, the Treaty embodying the statute of the European community was also suspended.

The failure to enact both treaties created a chaos and vacuum in pro-European political elites which was partially resolved by the signing by the creation of the European Economic Community [6] and European Atomic Energy Community [5] on the March 25, 1957. These treaties were silent about human rights issues and were focused on the construction of the common economic space .

From the inception of all three communities, their legal nature was a subject of the numerous debates. Depending on the legal views and approaches, western scholars considered them either the integral part of the national law or international law. The final line under this discussion was drawn by the Court, which outlined that: '...E.E.C. has created its own order which was integrated with the national order of the member-States the moment the Treaty came into force; as such, it is binding upon them. In fact,

by creating a Community of unlimited duration, having its own institutions, its own personality and its own capacity in law, apart from having international standing and more particularly, real powers resulting from a limitation of competence or a transfer of powers from the States to the Community, the member-States, albeit within limited spheres, have restricted their sovereign rights and created a body of law applicable both to their nationals and to themselves...' [13]. So, basically the Community legal order was promoted as the one with *sui generis* nature. We totally share the opinion expressed by Swedish Professor A. Cuyvers that without these doctrines, the EU would never have been as successful and effective as it is [14, P. 161].

Throughout the next several decades, member states of the European Communities increased substantially increased the collaboration between them even despite the institutional deadlock. Gradually, except common market, the new form of integration were launched such as: European political cooperation and combating terrorism. All of them penetrated the field of human rights protection one way or another. That's why member states came to the point when they had to interfere and push forward 'human rights question'. The other reason behind this, was that the constitutional courts tried to challenge principle of the primacy of the Community law (now Union law) over national laws due to the lack of the human rights protection. This was the case in *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, in which German Constitutional court challenged this principle on the ground of the insufficient level of human rights protection in the EU [12].

Historically, very important decision was handed down by the European Court of Justice (henceforth – ECJ) case *J. Nold, Kohlen- UND BaustoffGrosshandlung*, in which the Court recognised that the national human rights provisions and the European Convention have to be considered as the part of the EU legal legacy [11]. So, here we see that the ECJ's activism was crucially important in terms of the future not only human rights protection, but generally – European Communities (now – European Union) legal order.

In 1993 the European Union was created as a three pillar system which united European communities and cooperation in the field of international and home affairs policy.

Prominent step in the development of the newly formed European Union was made in 2000, when the Charter of Fundamental Rights of the European Union (henceforth – Charter) was adopted which reflects EU's attitude towards human rights protection. From the Lisbon treaty (which abolished three pillar system of the EU providing for a legal personality), Charter is considered to be an integral part of founding treaties (Art. 6 Treaty on the European Union). But its application can't go beyond the EU competence (Art. 51. of the Charter) [1]. So, even in applying this Charter, principles of the subsidiarity and proportionality have to be observed.

In 2007 Council of Europe and European Union signed a Memorandum of Understanding which confirms the role of the Council of Europe as the benchmark for human rights, the rule of law and democracy in Europe,

stipulates the need for coherence between the two Organisations' legal norms in the fields of human rights [2].

To sum up, it is worth to suggest that the strengthening of human rights protection system was a logical development for the European Union from the point of its future and position in the world system.

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