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**The Evolution of Human Rights Protection  
within the EU Legal System**

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**Abstract:** Having in mind the EU's policy to rebuild the democratic systems within the former European communist countries and its involvement in international actions regarding human rights enforcement, there is no doubt about the importance of individuals rights protection in the European Union's legal system. In this respect, the present paper analyzes the evolution of the principle of EU's human rights protection. The research done on the EU legislation and courts' jurisprudence shows that there are three main stages related to the EU evolution of human rights protection: first – the rejection, by the ECJ, of human rights principle as part of Community Law; second - its acceptance, recognition and protection by the EU's judges; third - the regulation and monitoring of the fundamental rights and freedoms at the European level. Based mainly on the ECJ's jurisprudence, this paper tries to answer the following questions: What was the political motivation not to explicitly protect human rights through the cofnstituent treaties? What was the contribution of ECJ to remedy this situation? How the European acquis was developed in order to guarantee the principle of fundamental rights? What is the current state of EU legislation for guaranteeing human rights within the European legal order?

**Keywords:** human rights; Charter of Fundamental Rights of the European Union; EU law; Court of Justice of the European Union; European acquis

## **1. Introduction**

In the early '50s, it was considered that the duties to respect and guarantee human rights should be exclusively borne by the Council of Europe, arguing that the European Community's institutions, which operated mainly in the economic field, could not affect the principle of human rights protection (Betten & Grief, 1998, p. 53). However, the European political and legal reality proved otherwise. Since the first years of its existence, the European Court of Justice (further, ECJ) was asked to rule on the conformity of EU institutions' acts with the constitutional provisions of Member States relating to fundamental rights.

It can be seen that, although the founding Member States of the European Communities have played an important role in the adoption of the Universal Declaration of Human Rights, as well as in the regional and international development of human rights law, the main treaties establishing the European Communities were not included such legal provisions.

The analysis of protection of individual rights and fundamental freedoms within the European Union human rights system pointed out that, in the first decades on the Court of Justice existence, a vast number of individual cases raised the issue of guaranteeing individual rights, an approach in order to analyze the facts through the principle of human rights. So, there were identified three main stages, namely:

- the Court rejected the principle of human rights as part of EU Law;
- the acceptance, recognition and its protection by the Court;

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- the regulation and monitoring of human rights and fundamental freedoms.

The need to guarantee individual rights by the European institutions began with the establishment of European Coal and Steel Community.<sup>1</sup> Therefore, the documents issued by the High Authority was challenged before the Court by citizens of Member States whenever they have infringed the individual's rights and freedoms guaranteed by national constitutions.

By a careful analysis of ECJ case law there could be identified a gradual evolution of the way how the principle of human rights is protected in Europe. Studying the EU acquis, especially the jurisprudence of courts from Luxembourg, it has allowed us to identify three main stages in the evolution of fundamental rights protection, as follows:

- the stage of principle of human rights and fundamental freedoms rejection (1953 - 1962);
- the stage of acceptance to interpret the primary legislation in order to create individual rights (1963 - 1968), the recognition of the rights and fundamental freedoms to be respected in the Community legal order (1969 - 1974) and the protection of these rights and freedoms (1975 - 1992);
- the stage of legislation (1992 - present) and monitoring (2007 - present) the fundamental rights and freedoms by institutions and EU Member States.

Further, these stages are presented, supported and analyzed based on the reasons identified in the case law of the Court and in the evolution of the EU substantive law.

## 2. Rejection of the Human Rights Principle by the Court of Justice

By the second half of the '60s, the Court refused to interpret acts of Community's institutions in accordance with the constitutional provisions of the Member States in order to ensure the rights and fundamental freedoms. In 1958, Friedrich Stork<sup>2</sup> submitted to the Court a complaint against the ECSC's High Authority, claiming that its decision of November 27, 1957, violated his rights under the German Constitutional Law. In these circumstances, the Court decided that the High Authority is held only by the Community Law, not bound by the law of the Member States. In addition, the European Court argued that it can decide only on the interpretation and application of the provisions of the Treaty,<sup>3</sup> without the possibility, in motivating its decisions,<sup>4</sup> to refer to national legislation of Member States. Therefore, the High Authority was not required, through its acts and actions, to comply with national constitutional laws.<sup>5</sup> So, the Court rejected the application of fundamental rights principle at the Community level, giving to the High Authority full freedom of action. A year later, four more complaints<sup>6</sup> were filed before the Court of Justice, which have raised the same issue of the disparity between the High Authority's decisions and constitutional rights of Member States' citizens.

By joining and trial together of the four cases on July 15, 1960, the Court upheld the arguments used in the motivating the Stork decision based on which the Community Court has competence to rule on the legality of the High Authority's acts in accordance with the Treaty, but it was not responsible to determine if these acts are in accordance with national legislation of each Member State, default with

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<sup>1</sup> The establishment of European Coal and Steel Community (the ECSC) was governed by the provisions of the Treaty establishing the European Coal and Steel Community, signed in Paris on April 18, 1951 and left the force on June 23, 2002.

<sup>2</sup> ECJ, Stork & Cie. vs. the ECSC High Authority, C - 1/58 of 4 February 1959, published in European Court Reports (ECR), p 17.

<sup>3</sup> This power is conferred on the Court by the art. 31 of the Treaty establishing the European Coal and Steel Community.

<sup>4</sup> Throughout this material, we use the generic term of "judgment" for all courts or tribunals mentioned.

<sup>5</sup> ECJ, Stork & Cie. vs. the ECSC High Authority, C - 1/58 of 4 February 1959, published in European Court Reports (ECR), p. 17, § 3 (A).

<sup>6</sup> ECJ, Präsident Ruhrkohlen-Verkaufsgesellschaft and others vs. ECSC High Authority, C - 36/59, 37/59, 38-59/59, 40-59/59, 15 July 1960, published in the ECR 1960, p. 423.

their constitutional law.<sup>1</sup> Moreover, referring to the request from the Nold case,<sup>2</sup> the Court noted that "Community Law, as shown in the ECSC's Treaty, does not contain any of the general principles that guarantee fundamental rights."

In the first decade of its existence, the Court refused to interpret the Community Law in order to protect rights and freedoms guaranteed by the constitutions of the Member States. As shown in the analysis of the above decisions, the Court expressly held that Community Law did not contain, at that time, none of the general principles guaranteeing fundamental rights and, therefore, the Community institutions were not held, in their actions, of respecting these rights.

### **3. The Interpretation of Primary Legislation in order to Create and Respect Individual Rights within the EU's Legal Order**

The analysis of ECJ's case law shows that it took more than ten years to accept the principle of human rights and fundamental freedoms as part of the Community Law. The first step in this direction was the Court's ruling of 1963,<sup>3</sup> which stated that independently of the Member States' legislation, the Community Law imposed not only obligations on individuals, but it provides - at the same time, fundamental rights as part of the European legal traditions. Moreover, the Court held that Community treaties must be interpreted "to produce direct effects and to create individual rights, which national courts must protect."<sup>4</sup> We may observe that this judgment of the Court, which ruled, with the direct effect of Community norms, the recognition of individual rights also, which was maintained in subsequent Luxembourg Court's case law.

In 1964, the Costa decision<sup>5</sup> established the supremacy principle of Community Law to national ones. Complementary interpretation of the Community Law conferred by the Luxembourg Court in Loos and Costa decisions contributed irreversibly to the praetorian acceptance of the principle of fundamental rights within the European legal order. This was facilitated by the fact that primary legislation was applicable with priority to national laws while the constitutive treaties contained no provisions on fundamental rights. Therefore, the only viable solution was the development of case law in this area.

Existing, in the Community legal order, more and more the need of acceptance of respect for human rights principle, in 1969 the Luxembourg judge established that this principle is part of the general principles of Community Law and it is protected by the Court. So, the Court, by reasons given in the Strauder case, said that "the provision invoked by the applicant does not contain elements capable to affect the fundamental rights guaranteed by general principles of Community Law and protected by the Court."<sup>6</sup> This decision is the first guarantee of the fact that individual rights were accepted as part of the Community legal order.

Although the Court's recognition of the fundamental rights had been completed, their effective enforcement continued to be debated. Thus, in the *International Handelsgesellschaft* decision,<sup>7</sup> Community judge returned to the matter of human rights protection "inspired by the common constitutional traditions of the Member States", stating that "the validity of Community measures and

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<sup>1</sup> ECJ, *Präsident Ruhrkohlen-Verkaufsgesellschaft and others vs. ECSC High Authority*, C - 36/59, 37/59, 38-59/59, 40-59/59, 15 July 1960, published in the ECR 1960, p. 423.

<sup>2</sup> ECJ, *Nold vs. ECSC High Authority*, C - 40/59, para. 2, July 15, 1960, published in the ECR, p. 426.

<sup>3</sup> ECJ, *Van Gend en Loos vs. der Belastingen Administration*, C - 26/62, February 5, 1963, published in the ECR, p. 1.

<sup>4</sup> ECJ, *Van Gend en Loos vs. der Belastingen Administration*, C - 26/62, February 5, 1963, published in the ECR, p. 1, § 3, § 4 and § 5.

<sup>5</sup> ECJ, *Costa vs. E.N.E.L.*, C - 6/64, 15 July 1964, published in the ECR, p. 585.

<sup>6</sup> ECJ, *Stauder vs. Stadt Ulm*, C - 29/69, 12 November 1969, published in the ECR, p. 419.

<sup>7</sup> ECJ, *Internationale Handelsgesellschaft mbH vs. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, C - 11/70, 11 December 1970, published in the ECR, p. 1125.

their effects in the Member States<sup>1</sup> cannot be removed based on the fact that they contravene to the fundamental rights or constitutional principles."

In conclusion, the Court held that "fundamental rights protection... shall be secured in accordance with the structure and objectives of the Community"<sup>2</sup> and it applies the principle of Community Law supremacy to the German national legal norms, denying thus the need to respect fundamental rights in relation to Community's objectives, although it had express reference to human rights protection as they were guaranteed by the constitutional common traditions of the Member States. Therefore, individual rights could not be guaranteed if it would be detrimental to the Community's interests.

In 1974, through the Nold II decision,<sup>3</sup> the Court reaffirmed that fundamental rights are part of the general principles of law whose observance the Court is obliged to provide.<sup>4</sup> In addition, this decision introduced a new aspect in the development of the case law of the Luxembourg Court because it established the possibility that, "in the application and interpretation of Community Law, the Court is able to be guided by and to refer to the norms of the human rights international treaties on which Member States are signatories".<sup>5</sup> Thus, the legislative gap of the EEC's Treaty to guarantee human rights was partially remedied, and the recognition of fundamental rights as part of the legal principles applicable to the Community legal order has become undeniable. However, this recognition did not solve the issue of ensuring effectively the respect for fundamental rights in the European Communities as it is stated further.

Praetorian recognition of the principle of fundamental rights as part of Community Law was followed by a policy statement issued on April 5, 1977.<sup>6</sup> Community institutions have officially recognized that the principles underlying the European Convention should be, at the same time, integrated into Community Law.<sup>7</sup> The Parliament, Council and Commission have stressed "the overriding importance importance they attach to the protection of fundamental rights, as they result from constitutional traditions of the Member States and from the European Convention on Human Rights". Moreover, European institutions have pledged that "in the exercise of their duties to meet the objectives of the European Communities, they should respect these fundamental rights".

## **4. The Regulation and Monitoring of the Fundamental Rights within the European Union**

### ***4.1. The Stage of Fundamental Rights' Regulation***

The constitutive treaties of the European Communities have not regulated to guarantee rights and fundamental freedoms within the European Union's legal system. Thirty years after the establishment of Communities, the Single European Act<sup>8</sup> made, for the first time, reference to the principle of human rights. In the third paragraph of the Preamble, it sets out that EU States "work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter"<sup>9</sup>. In this respect, the Single European Act is the foundation of human

<sup>1</sup> ECJ, *Internationale Handelsgesellschaft mbH vs. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, C - 11/70, 11 December 1970, published in the ECR, p. 1125, § 2.

<sup>2</sup> *Ibidem*

<sup>3</sup> ECJ, *Nold KG vs. Comisiei*, (Nold II), C - 4/73, 14 May 1974, published in the ECR, p. 491.

<sup>4</sup> ECJ, *Nold KG vs. Comisiei*, (Nold II), C - 4/73, 14 May 1974, published in the ECR, p. 491, § 2.

<sup>5</sup> *Ibidem*.

<sup>6</sup> Joint Declaration of the European Parliament, Council and Commission on fundamental rights protection and the European Court of Human Rights was adopted in Luxembourg on April 5, 1977.

<sup>7</sup> ECJ, *Johnston vs. Chief Constable of the Royal Ulster Constabulary*, C - 222/84, 15 May 1986, published in the ECR 1984, p. 1651, § 1.

<sup>8</sup> Single European Act (hereinafter SEA) was signed in February 1986 (entered into force in July 1987).

<sup>9</sup> See the Community Charter of Fundamental Social Rights (not to be confused with the new European Social Charter adopted in 1996 by the Council of Europe).

human rights principle at the European level's regulation as it paves the way of including this principle within the primary Community Law.

The Treaty of Maastricht<sup>1</sup> completed the SEA's provisions with regard to the human rights recognition and explicitly stated this principle. Thus, its art. F para. 2 was provided that the European Union shall respect fundamental rights as guaranteed by the European Convention on Human Rights and "as they result from the constitutional traditions of Member States, as general principles of Community Law". We mention that the arguments used by the Court in the Hauer and Rutili cases were taken and specifically regulated within the content of this article.

Maastricht Treaty regulates issues on the principle of human rights in other articles, too, as well as in its Preamble, while the requirements to ensure this principle became part of EU foreign policy. Many bilateral and/or multi-lateral agreements contain severe provisions on the respect for human rights and fundamental freedoms.<sup>2</sup> Also, in February 1992, at Maastricht there was signed a protocol by all the EU Member States,<sup>3</sup> which agreed that in the field of social policy they should follow "the path of the Social Charter of 1989". Thus, the protection of fundamental rights and freedoms has a central role in the further development of the European Union.

The regulation process of human rights and freedoms was marked by the proclamation of the European Union's Charter of Fundamental Rights,<sup>4</sup> following the conclusions of the European Council Council summit in Koln. The document consists of 6 titles<sup>5</sup> - dignity, freedoms, equality, solidarity, citizens' rights and justice, established by merging the three main generations of rights. This new catalog of fundamental rights is essential for the EU legal system, having a different fate of the 1989 Declaration<sup>6</sup> and gaining the status of primary legislation once with the entry into force of Lisbon Treaty.

In 1997, the Treaty of Amsterdam<sup>7</sup> brought innovations in the field of fundamental rights and freedoms protection at the European Union's level. Thus, the Treaty provided that "the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States"<sup>8</sup>. Therefore, the Treaty allows the Court to apply to all acts of the EU institutions the minimum standards related to human rights protection, as they are set by the constitutional common traditions of the Member States and by the international human rights law.

The important role of human rights principle held in the European Union's policy is highlighted by legal norms such as the suspension of certain rights<sup>9</sup> incumbent on a Member State when it violates one of the principles enshrined in Art. 6,<sup>10</sup> as well as by the sentence under which "only those European states that respect the principles set out in art. 6 para.1 may request the EU membership".<sup>11</sup>

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<sup>1</sup> Treaty on European Union was signed in Maastricht on February 7, 1992.

<sup>2</sup> See VI Lome Convention which expressly includes claims relating to suspension of the economic cooperation under violation of human rights.

<sup>3</sup> It is envisaged that the UK is a signatory to the Protocol.

<sup>4</sup> EU Charter of Fundamental Rights was proclaimed by European institutions and Member States representatives on December 7, 2000.

<sup>5</sup> It is envisaged generations of human rights as they have been classified by Professor Karel Vasak.

<sup>6</sup> Declaration of the Rights and Fundamental Freedoms, adopted on April 12, 1989, was adopted by Parliament as a reference tool in human rights and fundamental freedoms throughout the Community and in particular, for the Court. Declaration was the first Community catalog of fundamental rights and freedoms containing civil and political rights, economic, social and cultural as well as a series of new principles - the principle of freedom in art, science and research (Article 5 of. 2), principles constitutive of democracy (art. 17), consumer protection (Article 24) etc.. This document was still no significant meaning as a simple statement of recognition of these rights by signatory States, without the power to produce legal effects.

<sup>7</sup> The Amsterdam Treaty was signed on October 2, 1997 and entered into force on May 1, 1999.

<sup>8</sup> Paragraph 8 of the Treaty, amended art. F of the Treaty on European Union as it was quoted.

<sup>9</sup> See art. 309 UET.

<sup>10</sup> „The Union is founded on principles of liberty, democracy, human rights and fundamental freedoms and the rule of law, principles which are common to the Member States.”

<sup>11</sup> See art. 49 UET.

The Treaty of Amsterdam made a real "reform" in the field of guaranteeing human rights in the Union's legal system, both through explicit provisions on fundamental rights that it introduced in the EU primary legislation and through the individual rights transfer which took place between the third pillar - justice and home affairs, and the first Community pillar.

European institutions have provided a particular attention to the procedure for the fundamental rights and freedoms regulation which has yielded in a draft of the Treaty establishing a Constitution for Europe,<sup>1</sup> which included a catalog of rights and freedoms proclaimed in the Charter of Fundamental Rights, thus solving a number of issues raised over time in front of the Court of Justice. The draft of Constitutional Treaty was replaced by the Treaty of Lisbon, notwithstanding the legal force of regulations on principle of respect for the rights and fundamental freedoms.

The Charter of Fundamental Rights does not create new rights, but comprises in one document all the rights and freedoms of EU's citizens, stated by the European Convention on Human Rights, the European Social Charter, the Community Charter of Social Rights of Workers, the constitutional common traditions of the Member States, case law of the European Court and of the Court of Justice, as well as the international conventions on protection of human rights adopted by the United Nations, the Council of Europe and International Labour Organization to which Member States are parties. Therefore, the new catalog adds to the European Convention's provisions, not only other economic, social and cultural rights, but also new civil and political rights, such as the right to good administration<sup>2</sup>, the right to a healthy environment,<sup>3</sup> the right to protection of personal data,<sup>4</sup> and it extends the protection of individual integrity through prohibition of eugenic practices and human cloning for reproductive purposes.<sup>5</sup>

The new catalog of fundamental rights does not apply to all situations in which individual rights are violated within the European Union space, but only to those actions taken by EU institutions or other EU bodies and by the Member States when implementing EU Law, in accordance with Article 51 para.1. If the Charter does not apply to a specific situation, the fundamental rights continue to be protected, at local level, in accordance with national constitutional systems of each Member State. In addition, all EU states have joined the European Convention on Human Rights under which their commitments are independent of the EU Law's obligations. Therefore, any individual may bring an action before the Strasbourg Court for breach of a fundamental right guaranteed by the Convention after exhausting all remedies available at national level. Thus, the Charter completes and does not replace the protection offered by the national constitutional systems and by the legal system of the European Convention.<sup>6</sup> So, the democratic deficit invoked by the German Constitutional Court in the Solange I case, nearly 30 years ago, has been found a solution.

#### ***4.2. "Monitoring" Fundamental Rights and Freedoms through the Establishment of the EU Agency for Fundamental Rights (FRA)***

Tampere European Council<sup>7</sup> launched the idea of a Fundamental Rights Agency to provide institutions or other EU bodies and Member States "the assistance and expertise needed in order to fully guarantee the fundamental rights and freedoms" in implementing EU legislation.

<sup>1</sup> Treaty to enter into force when it was ratified by at least 20 of the 25 Member States signatories. Difficulties in the process of ratifying the Constitutional Treaty led to its temporary suspension. Recovery effort The ratification process was supported by the German EU Council Presidency The Berlin Declaration of March 25, 2007, although no specific reference is made to the Treaty, as provided for that immediate purpose "of placing the European Union on a renewed common basis before the European Parliament elections in 2009". This statement is basically relaunching the process of reforming the European Union, which led to the entry into force of the reform that replaced the Constitutional Treaty on 1 December 2009.

<sup>2</sup> See art. 41 of the Charter of Fundamental Rights.

<sup>3</sup> See art. 37 of the Charter of Fundamental Rights.

<sup>4</sup> See art. 8 of the Charter of Fundamental Rights.

<sup>5</sup> See art. 3 para. 2 of the Charter of Fundamental Rights.

<sup>6</sup> European Commission Report on implementation of the Charter of Fundamental Rights, 2010, p. 6.

<sup>7</sup> To be taken into account, the European Council meeting of 15-16 October 1999, held in Tampere, Finland.

The Agency was established by EU Council Regulation no. 168/2007, with its work starting on March 1, 2007. The new body has extended the former European Monitoring Centre on Racism and Xenophobia, based in Vienna, from the European problem of monitoring acts of discrimination to the protection of human rights and fundamental freedoms in general, but without proper monitoring competence over the Member States.

The Regulation establishes the Agency and governs its objectives, competences, missions, fields of activity, methods of work and cooperation, organization and operation. Among its attributions, the Agency collects, analysis and distributes information and relevant data, including results from research and monitoring activities provided by the Member States, by EU institutions and its bodies, offices and agencies, other national or international institutions and by Council of Europe; develops methods and standards to improve data, in cooperation with the Commission and Member States; achieves and encourages scientific research and surveys, preparatory studies and feasibility studies, at the request of Parliament, Council and Commission; publishes conclusions and opinions of EU institutions on thematic issues; publishes reports on matters relating to fundamental rights, including examples of good practices and thematic reports based on their analysis, research and studies; develops communication strategy and promotes dialogue with civil society for information on fundamental rights etc.

Agency does not interfere, in its activities, with the powers of other UE institutions or regional organizations in promoting human rights, but has competence to provide assistance and expertise to ensure implementation of legislation and programs to promote, protect and fulfill human rights in the European Union. Once the Treaty on the Functioning of the European Union and, default, the Charter of Fundamental Rights entered into force, there was, to the moral obligation established by the Regulation, a political one of supporting the Agency's mandate regarding its assistance and expertise relating to guaranteeing fundamental rights in the development and implementation of EU legislation.

## **5. Conclusions**

In conclusion, we may say that more than half a century ago the principle guaranteeing human rights in the EU legal order was difficult to be implemented. Gradually, socio-political changes have led to acceptance of human rights and fundamental freedoms as part of the Community Law principles, reaching as far European Union to be founded on values common to all Member States and on the principle of respect for human rights and fundamental freedoms.

European Union and its Member States must respect human rights in the implementation of European legislation in accordance with the constituent and amended treaties, the Charter of Fundamental Rights, European Convention on Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and Council of Europe, as well as the jurisprudence of the Court of Justice and of the European Court of Human Rights.

The evolution of fundamental rights and freedoms protection within the UE legal order had a difficult way to go, slow and still far from being complete. We believe that the entry into force of the Treaty on Functioning of the European Union and the establishment of the Agency for Fundamental Rights will allow a better monitoring of human rights and individual freedoms in Europe, based on such legal framework and means necessary to achieve this objective.

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