

The European Union and Human Rights

1. FOREWORD

From the very beginning activities of the European Union (hereinafter – “EU”, “Union”, “European Union”) have been exclusively concentrated on issues related to the economic integration. After creating a new level of political authority, the Member States as the founders have not considered limiting these authorities with fundamental rights, typical for their national government bodies.

Accordingly, during the economic integration process within European Communities¹ provisions on human rights protection were not reinforced in their founding treaties. Based on the above, institutions of the Union did not share any universal values in their actions (except for the values concerning economic welfare), had no responsibility for human rights abuses and were not subject to foreign control. Thus, real danger emerged as delegation of authority could cause violation of the guaranteed rights and freedoms, ensured by the provisions of their national constitutions. The problem became even more serious with increasing of the EU’s competences.

Given that European Communities and the European Union from the very beginning represented democratic community, the main democratic values, especially human rights and freedom should have been realized within their scope of work, regardless of the economic nature of integration processes. Thus, the approach in Brussels changed very soon and human rights protection became one of the integral parts of EU’s internal law. Without this fact it would definitely be difficult to mention the primary legal effect of the EU law with regard to national legislation. The European Union (especially the European Communities) Court, later its political institutions made protection of human rights the fundamental principle of the European Union, considering it as a baseline value of the Union. From a contextual perspective, this principle was considered as imperative incorporating the common constitutional traditions of the Member States with regard to human right and requirements of the European Convention on Human Rights. Constitutional traditions and European Human Rights System turned into a structural part of the EU Law, occupying the highest place in the hierarchy.

¹ The European Community, together with its legal personality, was transferred to the newly consolidated European Union which merged in the other two pillars. However Euratom remained distinct. The Euratom treaty had not been amended as the other treaties had, so the European Parliament had been granted few powers over European Union was not founded simultaneously. At the initial stage, in the 1950s were founded first European Communities; The Communities are the European Coal and Steel Community (ECSC), European Economic Community (EEC) and the European Atomic Energy Community (Euratom). Of These EEC (which from Maastricht treaty 1992 to 2009, when the Lisbon treaty entered into force was called “European Community”) and Euratom were created by the Treaty of Rome in 1957. Earlier, in 1951, the Treaty of Paris was signed, creating the European Coal and Steel Community (ECSC). In 1967, the Merger Treaty was signed in Brussels, which created a single set of institutions for the three communities; later with the “Budget merging reform” (1970-75) European Community turned into one de facto organization. The Maastricht treaty unified those three Organizations and it’s institutions into European Union, but till 1st December of 2009 European Community and Euratom continued de jure functioning as independent organizations (In 2002, the Treaty of Paris which established the ECSC expired, having reached its 50-year limit).

On 1 December 2009, the Lisbon Treaty entered into force and reformed many aspects of the EU. In particular, it changed the legal structure of the European Union, merging the EU three pillars system into a single legal entity provisioned with it. The Euratom treaty thus remains in force relatively unamended from its original signing, but it is not listed in EU’s founding Documents. It is attached to Treaty of Lisbon (N:2, Protocol on the amendment in European Atomic Energy Community Treaty).

Later in Brussels the Human Rights Catalogue was created as the main charter of fundamental rights which became equal to founding treaties² as a result of the reform implemented on the basis of the Treaty of Lisbon signed in 2007. Introduction the Union citizenship based on the Maastricht Treaty 1992 was also a very important step in this respect. The above mentioned fact strengthened the legal relationship of Member State citizens with the European Union (which at the same time, made them citizens of the Union), becoming a source of additional opportunities and guarantees for individuals (Union citizens) by improving their legal position within the EU law.

Thus, in order to fully represent the issue of human rights with regard to the European Union, several important related issues should be considered in more detailed ways, in particular: the history of establishing human rights protection principles in the European Union law (practice of the EU institution in the field of human rights protection), introduction of the Union citizenship and its practical importance, the Charter of Fundamental Rights of the EU and the issue of its compatibility with the European Convention on Human Rights.

2. THE INTRODUCTION OF HUMAN RIGHTS PROTECTION PRINCIPLE IN EUROPEAN UNION LAW

In modern times, the fundamental nature of human rights protection principle is clearly defined in the European Union founding treaties for proper functioning of the European Union law and all its institutions, organs and agencies. Their relations with the EU's citizens, persons under its jurisdiction and the Member States should be based on this principle.

Article 2 of the Treaty on European Union (According to the current edition) envisages: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These are core values for the EU and Member States. During forming the relations with both member countries and the outer world the European Union strictly demands to follow these values. But the general characteristics are not limited only with these values, typical to the societies within the Member States. The second sentence of the Article 2 also envisages the pluralism, nondiscrimination, tolerance, justice, solidarity and equality between women and men. Difference between these two lists lies in the fact that only violation of basic values can become the foundation for using sanctions. The legal content of the provision respect for human rights is envisaged under the Article 6 of the EU Treaty. In particular: The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. (Art.6.1). It also says that "fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law (Art.6.3).

The readiness of the European Union to protect and strengthen human rights is supported by political control mechanism and the opportunity to adopt sanctions against Member States which have questioned the fundamental values of this integration organization by their actions.

² European Union is based on two Founding Documents: "Treaty on European Union" (so-called Treaty of Maastricht 1992) and the Treaty on the Functioning of the European Union (former Treaty on "European Economic Community". It also is referred as "Treaty of Rome of 1957"). Those both founding documents are now functioning under the Treaty of Lisbon and they have equal legal power. On the unity of this "treaties" is based the European Union. Accordingly, these "agreements", as well as the constitution of the state, have the highest place in the hierarchy of sources of European Union law system (Common to all Member States and its citizens). They are the core of this system and represent the EU's "Primary law". Similarly to the State Constitutions, these "agreements" create legal basis for EU institutions to publish numerous legislative and other legal acts (EU "Secondary", i.e. "Produced law"). If the "Secondary Law" acts do not apply to provisions of founding "agreements", such acts shall be deemed invalid by the European Court, which provides "Constitutional control" within EU.

Article 7 of the Treaty on European Union marks that the EU Council acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in case of serious and persistent violations of rights of the human person, freedom, democracy, equality and the rule of law. The decision about the existence of the breach is adopted unanimously. Usually, Member State is not allowed to submit its observations. A decision is initiated by one third of the Member States³ or the European Commission; obtaining the consent of the European Parliament is necessary. Before making a decision the Member State is invited to submit its observations.

After a determination has been made qualified majority may decide to suspend certain rights. The nature of the possible suspension is not specified. The Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons. The treaty specifically indicates the case of voting right suspension in the European Council for the Member State which committed the breach. At the same time, the obligations of the Member State in question under the treaties shall in any case continue to be binding on that State.

It should be emphasized that this mechanism (following the Treaty of Nice 2001) was added together with a specific early warning system. Paragraph 1 of Article 7 of the Treaty on European Union envisages preventive actions by the European Council, aimed to ensure preventive actions in order to avoid negative development of events in any state of the European Union. The main clue is that the Union starts to operate in early stages of the crisis, when the risks of violation are not emerged yet. The Council may determine that there is a “clear risk of a serious breach” by a Member State of the values of human dignity, freedom, democracy, equality, the rule of law and respect for human rights as well as address recommendations to it. The decision is made by a majority of four fifths of its members. Obtaining the consent of one third of the Member States, the European Parliament or the European Commission is necessary in order to launch the process. “Until a decision is made, in case there is a clear risk of a serious breach the Council shall hear the Member State in question. The Council shall regularly verify that the grounds on which such a determination was made continue to apply.” (See Art. 7.1, the Treaty on European Union).

The EU recently draws increased attention to the issues around human rights. There are active discussions in the EU Court of Justice for simplifying availability options in order to protect individual and other rights granted to any natural and legal person under the EU Charter of Fundamental Rights, founding treaties and current legislation of the Union.

Increasing the EU’s interest in this sphere could be explained by interrelated reasons. This is natural process at the EU integration and legal consolidation enhancing stage, expressed with abolition of dividing it to three “pillars”. At the given stage the EU was also forced to undertake radical measures in order to avoid negative results of expansion in the legal field and strengthen the Accession criteria (Copenhagen criteria) by appropriate internal legal development, as well as to avoid lowering the threshold of human rights protection requirements. In addition, political elite of the EU states decided to grant legitimacy to the construction of Europe, attract wider population to support it and make the European Union attractive for ordinary people. Finally, the adoption of the Charter and legally binding it as a result of the recent reforms under the Lisbon Treaty of 2007 was a response towards the lack of positive norms of human rights protection in the EU law.

As it was mentioned above, the European Communities were created as economic or specialized formations. They should have supported the rapprochement between the EU states using technical ways and reducing inter-ethnic conflict by promoting integration. The fact that the communities could invade the sphere of human rights was not considered. The founding states were very careful about comparing issues of human right system integrity, economic and social rights to the rights protected in court. That is why the founding treaties do not contain chapters concerning the human rights. Apparently there was another reason why the global creation process of international

³ Nowadays (Since the 1st July of 2013) EU has 28 Member States, with a combined population of over 500 million inhabitants and covering 5 million km² - Author.

human rights institutions had no impact to the Formation of the European Union. At regional level, this problem turned out to fall entirely under competence of the Council of Europe. Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe was outstanding in terms of its effectiveness and institutional provision. The situation remains unchanged in this respect, while Western European leaders and the political establishment were always against parallelism, competition and unnecessary duplication when it came to creation of international agencies. The Council of Europe and the European Union perfectly complemented each other and it seemed quite enough for many years.⁴

And still the EU law as the unifying regulatory system remains involved in development of Member States National laws. Integration could be harmful because it did not foresee the importance of human rights as it was considered by national constitutions, parliaments and legal bodies. For the first time it became apparent to the Court of Justice of the European Communities (now the Court of Justice of the European Union). They have adequately assessed that the competence of the EU was expanding and the capacity of legislative activity was growing. Interests of individuals in the European Union should have been protected to the same extent as it was towards the National state and the whole army of bureaucrats. Otherwise the legitimacy of the European Union would be subject to suspicion. It will become more and more difficult to prove the EU Rule of Law, its supreme legal power and direct action, as well as claiming that in case of a collision with national constitutions the EU law must be applied even in the case when it is not subject to any control with regard to the human rights protection.

In the late 1960s The European Court of Justice changed nihilistic attitude towards the existing practice of human rights. The good examples of this practice could be decisions made on *Stork*⁵ and *Geitling*⁶ cases, when the Court refused to take into account the arguments in favor of the fact that European Coal and Steel Community highest body's legal acts should respect the provisions of the German Constitution.

In the *Stauder*⁷ case, concerning the violation of a fundamental right (human dignity) the Court declared they would protect "fundamental rights derived from the general principles of the Union".

The Court rightfully considers protection of human rights as the general principle of the EU law, every secondary legislation and institution of the Union must comply with. It is interpreted more widely in terms of human rights protection principles according to the EU law. In particular it ensures that this principle is derived from the constitutional traditions of the Member States. Since the decision on *Nold*⁸ and *Rutili*⁹ cases, the Court more often relies on European Convention for the Protection of Human Rights and Fundamental Freedoms. Guidelines on European Convention for the Protection of Human Rights and Fundamental Freedoms have become more widespread in Court practice. The confrontation between European Court of Justice and Germany's Federal Constitutional Court in the 1970s contributed to wide interpretation of human rights protection principle. The EU court claimed that the Federal Constitutional Court is not authorized under any circumstances discuss the invalidation of the EU legal acts, even if it contradicts Germany's constitutional law, namely provisions strengthening respect for basic human rights. The Federal Constitutional Court would only agree in case of number of conditions, including effective protection of specific codified list of human rights. The solution first of all is

⁴ See. *Европейское право. Право Европейского Союза и правовое обеспечения защиты прав человека; Учебник для вузов (под ред. Л. М. Энтина), М., 2007, с. 325.*

⁵ See. Case 1/58, *Stork v. High Authority*, [1959] ECR 17

⁶ See. Case 36-8, 40/59, *Geitling v. High Authority*, [1960] ECR 423

⁷ See. Case 29/69, *Stauder v. Ulm* [1969] ECR 4119

⁸ See. Case 4/73, *Nold v. Commission*, [1974] ECR 491

⁹ See. Case 36/75, *Rutili v. Minister for the Interior*, [1975] ECR 1219

connected with first and second cases of Solange,¹⁰ reflecting the evolution of European Court of Justice and the highest national court approaches.

Court practice has paved the way through the respect for human rights by the European Union and its reinforcement in political documents and primary legislation. In the protection of human rights was mentioned in the preamble to the Single European Act. The preamble to the Single European Act of 1986 makes reference to respect for human rights.

In 1989, the European Parliament proclaimed declaration of fundamental rights and freedoms. Declaration consisted of 25 articles and included civil-political and socio-economic rights. The Recommendation document also provided guarantees of rights and important principles of democracy (Art.17) and person's legal status.

The Charter of Fundamental social rights for workers of the European Union was also adopted in 1989. The Charter was approved by all EU countries except Great Britain. The Charter is a recommendation document and recognizes workers' rights of employment and remuneration, improving living and working conditions, social protection and other socio-economic issues. The main part consists of 30 paragraphs.

Both documents were of great political importance. Later they were used as solid sources during drafting the Charter of Fundamental Rights of the European Union. However, they are not legally binding the EU institutions and agencies.

It made more valuable including the concept of fundamental human right in the text of the Maastricht Treaty 1992. Later the Amsterdam Treaty of 1997 included human rights in fundamental principles of the European Union and protection of which is a necessary condition for the Union membership. At the same time, it also provided a mechanism for ensuring basic rights, established jurisdictional control over compliance with them and substantially expanded the competence of the European Court.

Finally, another important fact should be mentioned in the context of human rights protection principles within the EU law. The concept of European citizenship was introduced together with the foundation of the European Union in 1992. The Maastricht treaty of 1992 recorded legal ties between the European Union and its citizens for the first time which further emphasizes the role and importance of the EU Treaty for the legal system of the Union.

3. THE EUROPEAN UNION CITIZENSHIP

Despite its international legal origins,¹¹ the signs of federal republic were always noticeable with regard to the legal status and practical activities of the European Union.

European Union Citizenship, established by the Maastricht Treaty (1992) and entered into force on 1 November 1993 should be undoubtedly regarded as one of the sign mentioned above. Since then the citizens of the Member States automatically received the European Union Citizenship. The "Union" or "European" citizenship is usually expressed in granting additional rights to the citizen derived from its direct legal union with the European Union. Namely, the citizens have rights to:

- move and reside freely within the EU;
- vote for and stand as a candidate in European Parliament and municipal elections;
- be protected by the diplomatic and consular authorities of any other EU country (for EU citizens whose embassy/consulate is not represented in a third country);
- petition the European Parliament

¹⁰ See. Solange I [1974] 2 CMLR 540 and Solange II [1987] 3 CMLR 225 (Case C-69/85, Wünsche Handelsgesellschaft GmbH & Co. v. Germany [1986] ECR 947).

¹¹ EU Founding Treaties ("Treaty on European Union" and The Treaty on The Functioning of The European Union officially referred as "Agreements") are presented in form on international agreements between Member States. Any amendments in these documents are made by common consent.

- complain to the European Ombudsman in any case of alleged maladministration by the EU institutions or bodies;
- contact and receive a response from any EU institution in one of the EU's official languages;
- access European Parliament, European Commission and Council documents.¹²

The Treaty also prohibits discrimination on the basis of nationality. This principle in the first place obliges the Member States to guarantee that citizens of another country of the Union are under the same conditions as nationals of that State with regard to the equal rights and responsibilities.¹³

Above mentioned provisions have already been included in previous editions of founding treaties, moreover, the principle of the inadmissibility of discrimination on the basis of nationality was entitled to all documents since 1957 (included in original text of The Treaty of Rome). According to the Amsterdam Treaty 1997 amendments the European Union institutions were empowered to take action to combat a wide range of discrimination, as based on sex, race or ethnicity, religion or belief, disability, age, or sexual orientation.

The above-mentioned principles have been enshrined in the Treaty of Lisbon signed in 2007. The second part of Treaty on the Functioning of the European Union called Non-Discrimination and Citizenship of the Union is an issue of primary importance for “new” European Union.

In addition to the current rules, the new norms emerged concerning European Citizens collective rights to realize “civil initiatives”; In order to adopt new legal acts the proposal for the European Commission should be prepared that have the potential for one million signatures of EU member State nationals. In this case, the European Commission shall review this proposal. In fact, the innovation under the Lisbon Treaty gives the EU citizens the opportunity to become initiators of the legislative process, draft legislative acts directly or develop the EU's legislative agenda.

Introducing the new civil initiative institute has changed condition of the EU citizens but it is not highly significant for present moment. The new civil initiative for the first time granted the EU citizens a real possibility to participate in policy-making process. The citizens just have to coordinate and gather one million compatriots in order to voice their opinion. However, it should be noted that the idea of European Citizens' Initiative is not very highly valued by some members of the Parliament who suggest that direct democracy is better expressed through referendums.

This idea certainly has some grounds especially in the light of the fact that European Commission is not obliged to reflect people's will in legislation. On the other hand, the initiative opens the door for the process of Cross-Border cooperation. Undoubtedly, the European media will publish articles and reports about civil initiatives, which are more comprehensible for the reader compared to the draft normative acts.

Lisbon Treaty does not prescribe a legislative procedure for realization of civil initiative right because it is only the form of amendments to the founding treaties (the Treaty on European Union and the Treaty on the Functioning of the European Union). That's why the Spanish EU Presidency held consultations regarding the civil initiative. The European Commission has prepared a number of technical proposals with regard to the implementation of the initiative. The commission suggested a condition in which one third of Member State

¹² Any citizen of the European Union, or resident in a Member State, may, submit a petition, *make a complaint* to the European Ombudsman and has the right to request a document.

¹³ «Old» European Union established a very intense judicial practice, which ensured the interpretation and application of this principle in different situations. In particular, European Community Courts and subordinate tribunals marked off from each other direct and indirect discrimination. The latter, under certain conditions, may be considered as admissible (For example, setting up requirements for knowledge of state language, which gives certain preferences to country's citizens). Certain exceptions to the principle of non-discrimination are enshrined in the various provisions of founding documents, for example, granted right to the Member States, not to employ foreigners in Public Service (including EU citizens), provided that given government position confers to real government authorities.

population should participate in realization of civil initiative. It means that the statement must be signed by citizens of at least ten Member States. The number of signatures depends on the size of population figures from each member state; accordingly, the smaller Member States are required to collect fewer signatures when in case of bigger member states 0.2% of the total population is an appropriate threshold.

The procedure for realization of European Citizens' Initiative could be initiated by both citizens and the organizations. The proposal should be submitted to the European Commission; at the same time there is a condition set for publication of the report including information about supporters and funding of the initiative. Once officially submitted, the organizers have one year to collect signatures. It is possible to collect signatures via the internet, in addition to paper petitions. It makes the civil initiative a convenient source of influence for large groups of citizens, European Trade Union Confederation representing more than 60 million members is a good example.

At this stage the European Citizens' Initiative is a certain kind of experiment. The thing is that there is democracy in the European Union without people ("demos"). From now on the European society starts its existence in democracy context and receives additional support during realization process of civil initiative. There are no clear procedures for the realization of European Citizens' Initiative. It is also impossible to protect your own rights in case of refusal on considering the application by the European Commission. This underscores the fact that the European democracy is not relevantly developed in the field of civil representation.¹⁴

4. CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

It is a well known fact that the founding treaties of the European Union are establishing a constitution for Union (there was a similar case with regard to the founding treaties of the European Union), unlike National constitutions it does not include the "catalog" of the basic rights (except some provisions made in 90-es).

However, the fact that the other fundamental rights of man and of the citizen (life, personal inviolability, property, freedom of thought, freedom of speech and freedom of thought, conscience, religion or belief, social security, etc.) is not included in the founding treaties of the EU, does not necessarily mean that there are no such rights envisaged in the EU's legal system and that these rights in general, are not mandatory for EU's institutions, bodies and other agencies.

In 1969 the Case Law of the European Communities (now the European Union) recognized protection of basic rights as "one of the general principles of European community law", while some of these rights have been declared by the court as independent principles of the legal system of the EU, for example property rights or the right of protection.

The source and the basis of these principles are the common constitutional traditions of the Member States and international agreements on human rights. Convention for the Protection of Human Rights and Fundamental Freedoms is the document of key importance in this regard. The document was signed within the framework of Council of Europe in 1950 and considering the practice of the EU Case Law it serves as common European Bill of Rights.¹⁵

¹⁴ Nevertheless, there is a case of realization European Citizens' Initiative; EU citizens started a campaign in March of 2010, calling for a ban on genetically modified (GMO) crops until a new scientific body is set up to assess their impact. Environmental groups Greenpeace and Avaaz have collected over a million verifiable signatures from all 27 member states based on the ECI criteria. Petition was sent to European Commission President Jose Manuel Barroso. See. (Арабей Елизавета - Правовое регулирование института гражданской инициативы; E-resource; <http://eulaw.ru/content/grazhdane-es-vpervye-ispolzovali-svoe-pravo-na-grazhdanskuyu-iniciativu> [11.04.2012]).

¹⁵ As of 1st July of 2013, The European Court of Human Rights oversees the implementation of the Convention in the 47 Council of Europe member states, Including 28 Member States. Georgia signed the Convention on April 27, 1999 (Ratification to the convention was on May 20, 1999).

The EU founding treaties recognized the legal binding force of the Convention for the Protection of Human Rights and Fundamental Freedoms in 1992. In particular, it has been determined that: “the Union shall respect fundamental rights, as general principles of law, in the form as they are guaranteed in the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the common constitutional traditions to the Member States”.¹⁶

The Treaty of Lisbon (2007) strengthened this requirement. Pursuant to Article 6, of the Treaty of Lisbon “the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties”. It means that EU is obliged to join the Convention for the Protection of Human Rights and Fundamental Freedoms, i.e become an independent participant (Provided that each Member State will maintain the same status).¹⁷

After the EU's accession to the Convention for the Protection of Human Rights and Fundamental Freedoms, the for the first time the citizens will be guaranteed to have the opportunity of submitting complaints to the European Court of Human Rights not only about the national government (State bodies of Convention Member States), but also about action or omission of the supranational institutions of the Union (EU Institutions, bodies, agencies). In addition, in both cases the previous condition on necessity of internal appeal procedures will be maintained, the (In case of the EU it will be the necessity of submitting the complaint (See details below).

However, joining the common European human rights standards (Defined as in the convention) does not eliminate the necessity of Bill of Rights elaboration Bill for the EU as well as the above-mentioned convention does not abrogate or suspend the bills envisaged in national constitutions of the European states.

In that respect the Charter of Fundamental Rights¹⁸ of the European Union was initially solemnly proclaimed on 7 December 2000. It includes all of the basic rights typical to late 20th century, including economic, social and cultural rights.¹⁹

The EU Charter of Fundamental Rights represents one of the founding acts of “New European Union” and equals the founding treaties of the EU with its legal effect (Treaty on European Union, Article 6, paragraph 1). In addition, formally, Charter is still an independent source of law, which is not affiliated with the Treaty on European Union and the Treaty on the Functioning of the European Union.

During the preparation process of Treaty of Lisbon (2007) some technical changes were made in the Charter. However, these changes did not affect main content of rights, freedoms and principles; Changes affected the scope of the Charter and rule of its application.

The original text of the EU charter of Fundamental Rights (December 12, 2007) was approved by three political institutions - European Parliament, the Council of European Union and European Commission.

¹⁶ “The Treaty of Maastricht 1992, 2nd Paragraph of F article; Paragraph 2, Article 6 of “Treaty on European Union” Amsterdam (1997) and Nice (2001) editions.

¹⁷ Such formula of participation is not unprecedented. EU in parallel with its Member States is participant of a number of conventions of Council of Europe (For example, Convention on Action against Trafficking in Human Beings, Convention on Corruptions and etc.).

¹⁸ It should be noted, that The Charter of Fundamental Rights of the European Union was signed the European Parliament, the Council of Ministers and the European Commission. This document represents International State community, but without having any Intergovernmental character (See. Лепешков Ю. А. - Европейский союз и права человека ; E-resource; [http://www.eurasialaw.ru/index.php?option=com_content&view=article&id=3733:-----1950----&catid=224:2011-05-31-09-24-42 ; \[11.04.2012\]](http://www.eurasialaw.ru/index.php?option=com_content&view=article&id=3733:-----1950----&catid=224:2011-05-31-09-24-42 ; [11.04.2012])).

¹⁹ European Convention for Human Rights on the contrary, first generation rights (which were announced in the era of Bourgeois revolutions) basically is limited by Personal and Political rights and by the right to property. European Social rights are enshrined in European Social Charter which was adopted in 1961 and revised in 1996.

The Union and the Member States, confirms its respect to the European Social Charter while administrating Social Policy (the Treaty on the Functioning of the European Union, Article 151). But European Social Charter doesn't have any legal power to EU institutions.

The EU charter of Fundamental Rights (December 7, 2000) is quite important “Bill of Rights” if we consider the time of its adoption. It can be said that the Charter sums up the whole predecessor process of forming the human rights idea with regard to constitutional and international law not only in Europe but throughout the world.²⁰ The Council of Europe and the law established by it, which includes the regulation of human rights, had important influence on the content and spirit of the document.

Charter, which remains in the scope of both constitutional and international law is the first supranational act in the field of humanitarian law. This is the first document created to protect the individual from the state (or not only from the state) and its bodies, but also from the supranational organization and its institutions. This is a factor of crucial importance: Unlike the previous basic rights charters (national or international), aimed to protect human individuals from state arbitrariness, EU charter is directed to protect same rights and freedoms, but from another potential infringer – from supranational bodies of EU.²¹ From this point of view, the Charter can be used as of great persuasive power in the future.

For Georgia, Charter itself is not just an informative material for citizens and future lawyers to improve the general legal knowledge, but it can be regarded as a right model for improving Georgian legislation with regard to the human rights.

The EU charter combines heritage and originality: on the one hand, it considered the major achievements of the human race in humanitarian law and on the other hand, conceived these achievements in its own creative way.

The principle of inadmissibility of restrictions on rights and freedom enshrined in different legal sources leads to the succession of this document. It is directly laid out in the charter. According to the Article 53, none of the provisions shall be interpreted as restricting fundamental rights and freedoms ensured by the Union law, international or national legislation. The Charter can only improve the existing human rights provisions in Europe.

The rights and freedoms are presented in the Charter by completely different, new scheme. Unlike the doctrine on human rights familiar to Western Europe, dividing the priority (civil and political) and secondary (social and economic) rights, Preamble of the Charter and the Charter itself consider the legal status of every right and freedom²² of a the EU citizen and on an equal level.

In order to make the content of basic rights in the Charter comprehensible (visible) for ordinary people, basic rights were classified by new, non-traditional criteria; In particular, for the systematization (classification) of basic rights and freedoms was not chosen types of basic rights or their field of use (personal, political, socio-economic),

²⁰ European Convention for Human Rights on the contrary, first generation rights (which were announced in the era of Bourgeois revolutions) basically is limited by Personal and Political rights and by the right to property. European Social rights are enshrined in European Social Charter which was adopted in 1961 and revised in 1996.

The Union and the Member States, confirms its respect to the European Social Charter while administrating Social Policy (the Treaty on the Functioning of the European Union, Article 151). But European Social Charter doesn't have any legal power to EU institutions.

²¹ During foundation of European Community and later European Union, Nation states have transferred their governmental authorities “up”; In addition, over time authorities expand. As a result, the EU institutions, like state agencies, perform actions that have government-compulsory character. Authority, as we know may lead to abuse, Regardless of who might be in his train a state or EU as the International State Union. Accordingly, humans shall be protected equally from all possibilities. Charter of fundamental rights serves this exact purpose.

²² The EU Charter (Although it is not directly recorded in its title) represents Human's and citizens fundamental rights Charter. On the one hand, many provisions of the Charter of the EU are committed to grant a subjective authority to any individual, regardless of citizenship and place of residence. The majority Personal and Socio-economic rights enshrined in the Charter are considered in the level of “Human Rights”. Even Georgian citizens can be subjects of these rights, in case of their residence in EU Member States. On the other hand, Charted contains “Citizens rights”, for which citizenship is an obligatory. This content is directly indicated in relevant provisions: “Every citizen of the Union ...” (In case of Human rights, following wording is applied “Everyone”, “Every Human”, “Every Person”, “No One shall...” and etc.).

but the values on which they are based. So the principles of fundamental rights and freedoms indivisibility reflected in the Preamble of the Charter are presented this way.

EU Charter unifies all of the personal, political and socio-economic rights in a whole and recognizes them as basic rights. Social rights in many aspects maintain the program nature, but they no longer considered as “secondary”. There is no doubt that unifying all different category rights into one document should be regarded as the greatest achievement of the Charter.

However, civil, political, economic, social and cultural rights can be placed together. Besides the fact that this structure is chaotic and random, it can be determined by the purpose - to highlight the human dignity, as the binding source of all rights and freedoms.²³

The Charter consists of a preamble, which does not contain any legal norms (indicating the reasons and the goals of this charter, its sources, the fundamental values) and Article 54, which are grouped in 7 titles.

The basic idea of the preamble (and the whole charter in general) is to recognize (in paragraph 2) that “the EU puts Human at the center of own activities, by introduction EU citizenship and through creating free, secure and just space”. Preamble, though, summarizes fundamental values of human rights and freedoms around the logic, which involves a person's legal status in unified complex. In particular: human dignity, freedom, equality and solidarity. The structure of charter is built around this and other values (typically, each title of the charter represents one of the values from the complex, which contains the rights and principles):

TITLE I _ “DIGNITY” (Article 1-Article 5) – Empowers the right of Human Dignity and other rights and guarantees of human life: the right to life, Right to the integrity of the person, Prohibition of torture and inhuman or degrading treatment or punishment, Prohibition of slavery and forced labor.

TITLE II _ “FREEDOMS” (Article 6 – Article 19) - specifies the content of this fundamental value. The word “freedom” is used in the plural form, because it explains a wide range of rights, which finds its expression in human households and freedom guaranteed by the government and non-interference in other person’s life _ In particular: Right to liberty and security, Respect for private and family life, Freedom of expression and information, Freedom of the arts and sciences, Right to property, Freedom to choose an occupation and right to engage in work and etc.

TITLE III _ “EQUALITY” (Article 20 – Article 26) - The EU represents this value by following rights and principles: Equality before the law, Non-discrimination, Cultural, religious and linguistic diversity, Equality between men and women, the rights of the child and the elderly, Integration of persons with disabilities.

TITLE IV _ “SOLIDARITY” (Article 27 – Article 38) - represents major sources of social rights and principles within the Charter. This Charter aims to ensure harmonious development between various social groups. In Particular: Workers’ right to information and consultation within the undertaking, Right of collective bargaining and action, Right of access to placement services, Fair and just working conditions, Social security and social assistance, Environmental protection and etc.

Social rights and principles of the Charter usually are accompanied by reservations, that it is implemented according to national legislation and national practice, in terms of possible harmonization (approximation) with the EU legislation.

When negotiating the IGC mandate for the Lisbon Treaty, The United Kingdom and Poland obtained the agreement of the other Member States to a further protocol to the Lisbon Treaty which seeks to restrict the

²³ See. Татьяна Ушакова – “Хартия основных прав Европейского Союза; два шага вперед и один – назад в процессе европейской интеграции”. E-resource:http://evolutio.info/index.php?option=com_content&task=view&id=483&Itemid=53 [13.10.2012]).

interpretation of the Charter by the European Court of Justice and their domestic courts. It was recorded in one of the attached files of the Charter.²⁴

TITLE V _ “CITIZENS’ RIGHTS” (Article 39 – Article 46) - was originally conceived to reflect (duplication) those fundamental rights of EU citizens, which already existed in its founding treaties (Treaty on the Functioning of the European Union, Part II and Treaty on European Union). It is about the rights, such as: Right to vote and to stand as a candidate at elections in every member state, Freedom of movement and of residence, right to petition the European Parliament, right of access to documents of the institutions (see above).

Nonetheless, the fifth title of the Charter was expanded by Freedom of movement and residence, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State (Article 45, Paragraph 2) and Right to good administration (Article 41).

Article 41 contains the whole complex of authorizations and guarantees, by which EU citizens are granted during relations with the institutions, bodies, offices and agencies of the Union. For example: Right to have his or her affairs handled impartially, fairly and within a reasonable time, right of every person to be heard, the obligation of the administration to give reasons for its decisions, right to have the Union make good any damage caused and etc.

TITLE VI _ “JUSTICE” (Article 47 – Article 49) - represents the source of procedural rights and guarantees of person before court and during criminal offences: it unifies the right to an effective remedy and to a fair trial, Presumption of innocence and right of defense and etc.

TITLE VII _ “GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER” (Article 50 – Article 54) is the conclusive title of the Charter. The purpose of this title is to define the terms and rules for the application for the EU institutions and member states, as well to regulate the correlation of its norms with other, Universal, European and national basic rights sources.

The solution to this issue through some basic principles:

_ First of all, this is a restriction of the scope of the charter (Article 51, paragraph 1). Even though charter empowers the legal status of fundamental human rights and principles in all fields, the provisions of this charter are only addressed to the institutions, bodies and agencies of the Union and Member States.

In areas that are not regulated by the Union law (for example, the national parliament elections, religious, or family relations), the provisions of the charter do not have legal power to Member States. If the human rights are violated in these areas, person should seek protection in other documents, for example national constitutions or European Convention for the Protection of Human Rights and Fundamental Freedoms.²⁵

_ *The second basic principle is reasonably derived from the first one and ensures non-infringement of other sources of the human rights and fundamental freedoms (Article 53). For example Universal or European level international legal acts (UN international covenants of civil, political, economical, social and cultural rights [1966], European Convention for the Protection of Human Rights and Fundamental Freedoms, European Social Charter and other human rights conventions of Council of Europe), National constitutional Law (Basic rights of Member states constitutions, including Federal constitutions such as Federal Republic of Germany) and other basic human rights sources of EU. The latter clause, on EU level expands the catalog of fundamental rights and strengthens their guarantees, through inclusion of new provisions in founding treaties, legal acts and judicial practice (Case Law).*

_ Third basic principle determines the method of use and explanation of the provisions of the Charter, in particular, those provisions, which were “loaned” from other sources of fundamental rights.

²⁴ “The Declaration of Poland – “Protocol on certain Provisions relating to the United Kingdom of Great Britain and Poland” – declaration 3620. According to this declaration, Poland at this stage extends Social and Labor rights of Title IV.

²⁵ But this prohibition does not apply other sources of EU law, even when they are similar to the provisions of the Charter. EU’s rule of law of these sources fully applies to all Member States, including Poland and Great Britain as well.

Rights recognized by this Charter for which provision is made in the treaties shall be exercised under the conditions and within the limits defined by those treaties (Article 52, paragraph 2). This, first of all, concerns to those fundamental rights, which were removed from the second part of the Treaty on the Functioning of the European Union. This also concerns the right of the freedom to seek employment and to provide services in any Member State (Article 15, paragraph 2), which represents a key element of freedom of movement for workers in the EU internal market (Treaty on the Functioning of the European Union, Articles 45-48).

If the 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. (Article 52, Paragraph 3). This generally concerns to Personal and Political rights (Right for life, security of person, Freedom of association and etc.). The majority of those rights are receptions from the European Convention for the Protection of Human Rights and Fundamental Freedoms. This provision shall not prevent Union law providing more extensive protection. (Article 52, Paragraph 3).

European Convention for the Protection of Human Rights and Fundamental Freedoms, through the explanations of European Court of Human Rights Case Law (court practice) provides, in any case will maintain the minimum standards of fundamental rights. In addition, the Union, as mentioned above, has to join the European Convention of 1950 as the full right participant. Accordingly, we observe convergence trend between the EU and the Council of Europe in issues of human rights law interpretation and application. According to all this, the EU gains more reputation.

In the end, Charter recognizes fundamental rights as they result from the constitutional traditions common to the Member States (For example Article 20 –“Equality before the law”), those rights shall be interpreted in harmony with those traditions.

In addition to the above mentioned principles, Title VII empowers other general provisions. They: affirm, that The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties (Article 51, Paragraph 2); consider principles and scope of the limitations of rights and freedoms recognized by this charter (Article 52, Paragraph 1); prohibit abuse of rights (Article 54); demand the use of national laws and practices as specified in this Charter (For example, Right of Marriage, alternative work and other social rights) (Article 52, Paragraph 6).

The charter provides a special rule for those articles, which determines abstract principles: Rights of the elderly to lead a life of dignity and independence (Article 25), Consumer protection (article 38) and etc. These norm-principles require special legal acts from the EU and Member States. For explanation and justification control (inspection) purposes of public authorities’ relevant legal acts, person, or legal entities may rely on the principles of the Charter in the Court.

Poland and the United Kingdom secured a protocol to the treaty relating to the application of the Charter of the Fundamental Rights in their respective countries. Following peculiarities apply to these countries:

_ First, the protocol, in article 1(1) states that the "Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or actions of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms;

_ Second, Title IV of the Charter, which contains economic and social rights, does not create justifiable rights, unless Poland and the UK have provided such rights in its national law. (See Title IV, Article 1, Paragraph 2);

_ Third, there is a similar regime to Social Rights of the Charter which points to the national law and national practice. (For example, Article 9 – Right to marry and right to found a family). These provisions apply to the Poland and UK only considering their own legislation and law-enforcement practices.

During the preparation process of the charter it was decided to attach certain article comments by the title: “Explanations of the Charter of Fundamental Rights”.²⁶ These explanations were prepared by Special Assembly of “European Convention” and published in 2000. Its updated edition was prepared in 2002-2003, during the working process²⁷ of the EU 2004 constitution.

The explanations refer to the legal sources that have become an example of specific articles of the Charter (European Convention for the Protection of Human Rights and Fundamental Freedoms, Constitutional traditions of Member States, founding treaties and Case law of European Court, other Universal and European documents).

With these explanations, the EU and Member State Courts have been granted possibility, as quickly as possible, without additional research and analysis determine features and content of each basic right and principle of the Charter.

In 2004, these explanations became official document for law interpretations. The Charter has to be interpreted by the courts of the Union and the Member States with due regard to the explanations. This principle is empowered by charter itself (see Preamble and Article 52, Paragraph 5) and the EU founding treaties (Treaty of European Union, Article 6, Paragraph 1).

5. THE COMPARISON BETWEEN THE FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION CHARTER AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Through the whole existence of European Communities and the European Union the connection between the EU, the Council of Europe and the European Convention on Human Rights (hereinafter – Convention) was very close.

From the beginning, the Communities clearly marked off their field of activities from the Council of Europe, leaving international human rights protection control mechanisms to Strasbourg.²⁸ Hereafter Brussels confined itself to giving instructions about the Convention only. Later, when it became necessary for the EU to demonstrate its

²⁶ Roman Herzog - German politician, former President, President of the Constitutional Court and chair of the European Convention played a great role. He's deputy was Guy Braibant, famous French Jurist, who made some very interesting comments to the Charter.

²⁷ Before the Treaty of Lisbon, there was an attempt to make the common EU constitution. In December 2001, when the European Council met in Laeken, a fresh declaration was adopted committing the EU to greater democracy, transparency and efficiency, and setting out the process by which a constitution could be arrived at. This was to be achieved by a convention, which was intended to comprise the main 'stakeholders', in order to examine questions about the future direction of the EU. It was to produce a "final document", which soon became the draft constitution, to be handed over to the Intergovernmental Conference, scheduled for 2004, which would finalize a new treaty (“Declaration on the Future of Europe” or “Laaken Declaration”). The European Convention was established with 102 members, including the European Parliament, the European Commission, and representatives of heads of state and government. The Convention met for the first time in February 2002, and met thereafter in plenary session once or twice per month. The Treaty was signed on 29 October 2004 by representatives of the then 25 member states of the European Union. It was later ratified by 18 member states, which included referendums endorsing it in Spain and Luxembourg. However the rejection of the document by French and Dutch voters in May and June 2005 brought the ratification process to an end. Following a period of reflection, the Treaty of Lisbon was created to replace the Constitutional Treaty. This contained many of the changes that were originally placed in the Constitutional Treaty but was formulated as amendments to the existing treaties. Signed on 13 December 2007, the Lisbon Treaty entered into force on 1 December 2009. Exactly in the Treaty of Lisbon (In particular, “in article of amendment”) were transformed norms of 2004 European Constitution.

²⁸ The European Convention on Human Rights (ECHR) Drafted in 1950 is an international treaty to protect human rights and fundamental freedoms in Europe. The Convention established the European Court of Human Rights (ECHR). Any person who feels his or her rights have been violated under the Convention by a state party can take a case to the Court. Judgments finding violations are binding on the States concerned and they are obliged to execute them. But the Convention cannot be applied to EU legislative acts. In fact, in this situation, only accession of the EU to Convention will fix the case.

commitment to the principles of human rights, the EU chose the path of Case Law direct involvement in its internal law. It was most reasonable, efficient and rational decision.

After development and codification of own human rights legislation in form of Charter of fundamental rights, the EU reasonably determined its attitude towards the Convention. The EU managed to avoid temptation of writing off the Convention as already obsolete, outdated and unnecessary document and creating a new edition of it. Moreover, EU embarked on path of strengthening ties between its internal law and the Convention norms / mechanisms, granting the institutional nature to it.

When it comes to the rights enshrined in the Charter, there are formulations consistent with similar provisions of the Convention, which are impossible to be interpreted differently.

Additionally, the horizontal articles of the Charter directly determine the requirement for homogeneity. In accordance with Article 52, paragraph 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 is important because all the EU States are obliged to be a Member of the Convention. Since the European Convention on Human Rights is a developing document, and the contents and scope of the guaranteed rights are determined by decisions of the European Human Rights Court, the Charter and the Lisbon Treaty of 2007, have literally enhanced the European Convention on Human Rights and the European Court of Human Rights in the EU's internal law practice reception. Explanatory note of the Charter and the declaration attached to the final act of Lisbon 2007 Conference clearly define that under the material norm is considered its explanation and use by the European Court of Human Rights.

The question concerning the possibility and expediency of the EU involvement in the European Convention on Human Rights in context of working on the Charter remains unanswered. The official proposal regarding this issue was submitted by Finland and it was actively lobbied by the Council of Europe. Because of uncertainty on the future of the Charter and unwillingness of the majority of the Member States to strain EU with the Human rights legal obligations, this opportunity was not even discussed seriously. A few years later, the situation has changed dramatically in favor of accession of the European Union to the convention and removing obstacles to this process. On the one hand, the Lisbon Treaty of 2007 eliminated obstacles on the road to the EU's accession to the Convention of which the European Union's Court indicated earlier²⁹ and founding treaties were enriched with relevant provisions; the topic concerns the article 6, paragraph 2 of the EU Treaty of Lisbon edition, according to which EU joins Convention for the Protection of Human Rights and Fundamental Freedom. The Council of Europe made a following step: On June 1, 2010 the amendment no.14 entered into force on Convention for the Protection of Human Rights and Fundamental Freedoms, which is focused on the reform of convention control mechanism but first of all on reforming the European Court of Human Rights. As provided in Article 17, paragraph 1 of the amendment a new paragraph has been added to Article 59 ensuring the European Union joins the convention. This fact literally, established (prepared) the legal framework necessary for accession to the European Convention of the European Union.³⁰

²⁹ The Court believed that accession of the European Communities to the convention was legally impossible, because they do not have corresponding competence. It can be possible only after some amendments in Founding Documents (See, EuGH – conclusion, 2/94 Slg. 1996, I-1759/1789, Rn. 34). The European Court of Human Rights refused to examine Unions acts compatibility with the Convention, on the grounds that EU was not a participant of the Convention (See, Matthews, Rs. Nr. 24833/94 case, 18th February, 1999). Since the Convention is open for ratification only to the States (Article 56), EU could perform such action only in case of proper ammedements in founding document (See, Matthews, Rs. Nr. 24833/94 case, 18th February, 1999; Bieber Roland – Auf dem Weg zum Beitritt zur EMRK oder ein Grundrechtskatalog für die Europäische Union?, S. 12).

³⁰ Discussion on EU's accession to the Convention started in the second half of the XX century. In 1979, European commission has prepared a memorandum on accession to 1950 year Convention. This memorandum recognized Convention as one of the founding acts, which could reinforce the structure of Union. According to European Commission, this accession could secure proper protection of human rights within the EU. European Parliament

As expected, after creation of the appropriate legal basis (solid legal basis), the need to implement concrete measures on EU accession to the Convention became important. In March 17, 2010 the European Commission made public the main directions of negotiations (IP/10/291) concerning the EU's accession to the convention. On 4 June 2010, the EU Ministers of Justice gave the European Commission the mandate to conduct negotiations on their behalf; In response, on May 26, 2010, the Committee of Ministers of Council of Europe granted the special authority to the Human Rights Committee and ordered to prepare the legal act of EU's accession to the convention together with the European Commission. In addition, Committee of Ministers of Council of Europe determined the date of working at the draft project about the accession of the European Union to the European Convention on Human Rights_ June 30, 2011.

On July 7, 2010 the meeting between the Secretary General of Council of Europe Thorbjørn Jagland and Viviane Reding, the vice-president of the European Commission launched official negotiations on the EU's accession to the European Convention on Human Rights. Starting from this date the working group composed of experts from the European Commission and Council of Europe regularly gathered with aim to develop the agreement text. It should be noted that the working group has managed to cope with their tasks and presented the project on its sixth working session (13-18 March, 2011). But, despite the fact that the draft agreement was filed within the time prescribed, the decision making process was still dragging. According to the report published on October 14, 2011 a working group was explaining this circumstance with surrounding the contradictions of various provisions of the draft agreement, however, the same report clearly underlined the importance of immediate adoption of the text.

Generally, both sides equally supported this opinion. For this purpose, the format of negotiations has changed: on 13 June 2012, the Committee of Ministers made a decision to conduct further negotiations with the EU on accession to the European Convention on Human Rights within the frameworks of ad hoc group "47+1". The ad hoc group held 5 meetings in Strasbourg _ On 21 June, 17-19 September and 7-9 November 2012; 21-23 January and on 2-5 April 2013. On April 5, the negotiators, representatives of 47 Council of Europe member states and the European Union have finalized the draft accession agreement of the European Union to the European Convention on Human Rights. The document was also sent to the European Court of Justice for further assessment.³¹

After completion of this process the joint agreement on accession should be signed between the Committee of Ministers of the Council of Europe and the European Council. The European Parliament has to express its consent. The agreement should be followed by ratification from the EU European Convention on Human Rights parties. The successful completion of the ratification process in the end will bring us to the logical conclusion of the European Union accession process to the Convention (2015 is considered as the end date of the process).

It should be noted that the EU's accession to the European Convention on Human Rights is based on following cogent arguments: 1) EU citizens must have the possibility to appeal against the EU institutions and bodies, just as they did before the EU in case of violation of their rights by a Member States authorities. The EU has a fairly broad competence – the Member States handed over some of their sovereign powers to the EU. Therefore, the EU shall provide the same level of protection for its citizens as they enjoy it on the national level. Moreover, accession to European Convention for Human Rights is the obligatory condition for joining the EU. 2) Accession will make it

supported European Commission's position, which was regularly undermining the importance of Union's accession to the Convention. Both pillars understood that accession to the Convention could change Human rights system within Union, as well as all the provisions of the Convention required Law order changes. European Community Court, having recognized this fact, only stated that "respect for human rights is the general criteria of Union acts" (See. Алисиевич Е.С., Гюка А. - Присоединение Европейского союза к Европейской конвенции по правам человека 1950 г.; проблемы и перспективы; E-resource; http://www.eurasialaw.ru/index.php?option=com_content&view=article&id=3733:-----1950----&catid=224:2011-05-31-09-24-42 [25.01.2013])

³¹ Важная веха на пути к присоединению ЕС к Европейской конвенции о правах человека; E-resource: http://www.coe.int/ru/web/portal/home?p_p_id=newsroom&_newsroom_articleId=1394983&_newsroom_groupId=10226&_newsroom_tabs=newsroom-topnews [20.05.2013]; Евросоюз присоединится к Европейской конвенции по правам человека; E-resource: <http://www.epochtimes.ru/content/view/72976/2/> [20.05.2013].

possible to avoid undesirable differences between Luxembourg and Strasbourg courts by the very same human rights exposition; 3) It is a very important step forward for remaining the unity of values, equally shared by the European Union and the Council of Europe, which will automatically promote unity of the basic elements in international human rights system across the Europe.

Accession to the convention won't damage the autonomous nature of the EU law and the European Court of Justice in Luxembourg as the only body supervising protection of the EU law.³² The accession won't be expanded the competence of the EU, it will only create the commitment for the EU institutes and bodies to observe European standards in human rights sphere. Respectively, within the EU law the European Court of Human Rights will become a specialized court which will control the observation of the EU's international obligations. Therefore, legal system of the EU will be the subject of external control. It will also fill the flaw which exists in respect of legal protection of European citizens, so they will be protected in the same way their home countries offer. Eventually, this will promote the strengthening of human rights protection in Europe.

Joining the European Convention of Human Rights like its signatory states will put the European Union on an equal footing in the wider system of human rights protection which is coordinated by the European Court of Human Rights in Strasbourg. The EU will become a stakeholder of the convention and will be allowed to join not only the European Convention of Human Rights but also the respective protocols of the latter. After the EU joins the convention it will become the 48th member and obtain the status of a collective participant of the convention (instead of having a status of the member of the Council of Europe). This will enable the European Union to have its opinion heard at the hearings of the European Court of Human Rights. In addition, the EU will be allowed to nominate its own judge in the European Court of Human Rights.

Instead of being considered as alternatives, granting judicial powers to the charter and joining the EU to the convention should be perceived as mutually complementary steps. The fact that the EU has adopted its own charter does not diminish the benefit, which could be reaped if some actions of the EU institutions, bodies and other institutions are discussed at European Court of Human Rights. In the same manner, joining the European Convention of Human rights does not diminish the importance of the adoption of the EU's own Human Rights Catalogue (this Catalogue gives certain legal obligations to the EU institutions, bodies and agencies). On the contrary, besides reiterating the basic principles of the convention, the pillars of the charter also supplement the meaning of those principles and expand the list of rights, protected by the Court.

The EU's joining to the European Convention of Human Rights will have a huge impact on legal and political development of the entire European continent. Moreover, it would constitute a revolutionary advance for the EU. Accountability of Brussels towards its citizens, every natural and legal person under its jurisdiction will rise. The European Convention of Human Rights which in fact is already a part of the EU's legal system will be integrated into it in terms of judicial procedures as well. Therefore, joining the convention will give citizens new opportunities of legal protection. After using all internal means of legal protection, they will be able to file a complaint with the European Court of Human Rights against the EU (EU's institutions, bodies and agencies) if the latter violated their fundamental rights.

Finally, one of the most important circumstances must be specially underscored: Lisbon Treaty 2007 does not establish any specific procedure to address the European Court of Justice for protection of human rights. In any case, neither the founding treaties nor the regulations of the court envisage filling any new type of lawsuits for the cases of violation of human rights. Moreover, it was unequivocally and straightforwardly declared that granting mandatory,

³² The EU has a clearly defined position; Accession shall not affect the autonomy, specific nature and peculiarities of Union law. In addition, European Union's accession to the European Convention on Human Rights shall not affect the competence of EU institutions. (See. "Relating To Article 6(2) Of The Treaty On European Union On The Accession Of The Union To The European Convention On The Protection Of Human Rights And Fundamental Freedoms").

constitutional power to the Charter of Fundamental Rights of the European Union by the Treaty of Lisbon (which made the charter part of the founding treaties) does not establish any new power or task for the Union or modify powers and tasks defined by the Treaties (See. The Charter of Fundamental Rights of the European Union, Article 51.2). Based on the above, one thing is clear: despite impressive and solid performance of the European Court of Justice in establishment of highest standards of respect toward the fundamental human rights in the legal system of the EU it will not be a direct responsibility of the European Court of Justice to monitor whether the protection of the human rights meets the necessary benchmarks and that will be qualified as an additional job of the European Court of Justice. The main obligation of the European Court of Justice will traditionally remain to serve the interests of the European integration and therefore the principal priority for it will be to interpret the law of the European Union and ensure a high authority for the EU institutions, organs and branches. In fact, this approach means that the founding treaties rejected the prospect of granting the parallel competence to the European Court of Justice, similar to the European Court of Human Rights. As a result, the danger of the establishment of two competing court systems (one in the framework the EU and the other on the basis of the European Convention of Human Rights) for human rights protection in Europe was eliminated. Therefore, in the upcoming year the European Court of Human Rights will remain the only specialized institution in the field of human rights and the fundamental freedoms protection.

CONCLUSION

In summary, it can be said that the existence of the European Union in current conditions could be implausible without real and effective protection of fundamental human rights. Moreover, the universal language of rights and freedoms lies in the basis of common European legal order, relations between Member States of intergovernmental organizations, citizens and legal entities. If we analyze cautiously the EU's basic acts (Founding Treaties, Charter of Fundamental Rights), the content of other legal documents directly related to human rights and the practice of the European Court in the similar field, it will lead us to similar conclusion. In addition, it is noteworthy that we observe a convergence trend between the EU and the Council of Europe with regard to legal issues concerning human rights interpretation and application. Through the expected accession of the European Union to “European Convention for the Protection of Human Rights and Fundamental Freedoms” (1950) as a full participant, from the procedural point of view, convention will be integrated in Union’s law and will become an integral part of it. But it will not have a negative effect on autonomous character of the Union’s law. On the contrary, it will open new opportunities of legal protection to the citizens of the EU. In the end, it is more likely the European Union to actually gain additional credibility in human rights protection than lose anything.