

# UNIT 5: INTERNATIONAL PROTECTION OF HUMAN RIGHTS FROM A REGIONAL PERSPECTIVE (II): THE WORK OF THE EUROPEAN COMMUNITIES AND THE EUROPEAN UNION

1. General ideas. 2. The silence of the constituent Treaties. The Protection of Human Rights by the Court of Justice of the EU. 4. The progressive formalization of the protection of human rights. 5. The positivization of human rights. 6. The configuration of the protection of human rights after the Treaty of Lisbon.



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# 1. GENERAL IDEAS

- Features of human rights protection in the EU system:
  - ❖ Silence constitutive treaties European Communities.
  - ❖ Introduction through the case law of the Court of Justice of the European Union (CJEU).
  - ❖ Settlement and evolution via the integration process and raising of democratization needs.

# 2. THE SILENCE OF THE CONSTITUENT TREATIES

- Founding treaties: silence on human rights. Different reasons:
  - Treaty European Coal and Steel Community (ECSC-1951): technical IO.
  - Treaty European Economic Community (EEC-1958): utilitarian sobriety *moto* (to contribute by means of a common commercial policy to suppress restrictions).
  - Treaty European Atomic Energy Community (Euratom-1958): Economic dimension.
- Rights that could be found related in the social-economic spheres. There were not individual rights, but community rights:
  - ECSC: *Moto: The European Coal and Steel Community has the function of contributing, in harmony with the general economy of the States and through the establishment of a common market under the conditions laid down in Article 4, to economic expansion, increase employment and raise the standard of living in the Member States.*
  - ECC: *The Community shall have as its task, through the establishment of a common market and the progressive approximation of the economic policies of the Member States, to promote harmonious development of economic activities throughout the Community, continuous and balanced expansion, increased stability, an ever-increasing improvement in the standard of living and closer relations among the States participating in it.*

# 3. THE PROTECTION OF HUMAN RIGHTS BY THE COURT OF JUSTICE OF THE EUROPEAN UNION

- Development of the position of CJEU regarding human rights: Evolution towards the recognition:
  - **Initial position** of the CJEU: alien to the constitutive treaties, although expressly recognized in the constitutional systems of member states (principle of autonomy of the Community Law with respect to National laws). Example Judgment Stork & Cie v. Haute Autorité de la ECSC, case 1/58. (a) *Under Article 8 of the Treaty the High Authority is only required to apply Community law. It is not competent to apply the national law of the Member States. Similarly, under Article 31 the Court is only required to ensure that in the interpretation and application of the Treaty, and of rules laid down for implementation thereof, the law is observed. It is not normally required to rule on provisions of national law. Consequently, the High Authority is not empowered to examine a ground of complaint which maintains that, when it adopted its decision, it infringed principles of German constitutional law (...).*
  - **End of the 1970s** - beginning of a **three-stage jurisprudential shift**:
    - ❖ Stauder Judgment, 12/11/1969 (case 29/69): Respect for human rights as a general principle of Community law. *“The protection guaranteed by fundamental rights is, as regards Community law, assured by various provisions in the Treaty, such as Articles 7 and 40(3); this is written law supplemented in its turn by unwritten Community law, derived from the general principles of law in force in Member States. (...) Interpreted in this way the provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court.*  
**BUT:** It did not specify the fundamental rights that were protected, nor did it provide guidance on the principles of Community law that require the observance of such rights.

- ❖ Internationale Handelsgesellschaft Judgment, 17/12/1970 (Case 11/70): Obligation to safeguard in the framework of the structure and objectives of the Community.

*“Therefore, the validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the constitution of that State or the principles of a national constitutional structure. 4 However, an examination should be made as to whether or not any analogous guarantee inherent in Community law has been disregarded. In fact, respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community. It must therefore be ascertained, in the light of the doubts expressed by the Verwaltungsgericht, whether the system of deposits has infringed rights of a fundamental nature, respect for which must be ensured in the Community legal system.*

- ❖ Nold Judgment, 14/5/1974 (Case 4/73): they constitute general principles of Community law and the court must ensure their respect by drawing on the common constitutional traditions and other treaty instruments to which the States have adhered will be taken into consideration. *As the Court has already stated, fundamental rights form an integral part of the general principles of law, the observance of which it ensures. In safeguarding these rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot therefore uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those States. Similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law.*

- **Currently:** Opinion 2/94 of 28/3/1996 (Opinion of the Court pursuant to art. 228 EC Treaty), concerning the accession of the EC to the Convention for the Protection of Human Rights and Fundamental Freedoms: condition of legality of Community acts.

- Identification of human rights according to different conventional texts:
    - Recourse to the 1950 ECHR: 1975 Rutili v. Minister for the Interior Judgment (case 36/75) invocation of articles of ECHR. *Taken as a whole, these limitations placed on the powers of Member States in respect of control of aliens are a specific manifestation of the more general principle, enshrined in Articles 8, 9, 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and ratified by all the Member States, and in Article 2 of Protocol No 4 of the same Convention, signed in Strasbourg on 16 September 1963, which provide, in identical terms, that no restrictions in the interests of national security or public safety shall be placed on the rights secured by the above-quoted articles other than such as are necessary for the protection of those interests 'in a democratic society.'*
    - Resource to the European Social Charter.
    - Resource to the International Covenant on Civil and Political Rights 1966.
- Criticism:** the rights are not generally recognized, but have a limited scope (economic integration objectives and in connection with the Community).

# 4. THE PROGRESSIVE FORMALIZATION OF HUMAN RIGHTS PROTECTION

- Milestones of formalization (amendment of the constituent treaties):
  - Single European Act (Luxembourg 1986) reference in the Preamble to human rights.
  - Maastricht Treaty of 1992: Preamble and EU commitment. Included among the objectives of the CFSP and the CAJAI, and requirement of respect for ECHR in matters of asylum, crossing external borders, immigration, judicial and police cooperation in criminal matters, terrorism, drugs and serious forms of international crime.
  - Treaty of Amsterdam of 1997: With respect to the EU, respect for human rights is one of its general principles and its respect is a commitment of the EU. Serious and persistent violation may lead to the implementation of the sanctioning mechanism. With respect to the community pillar, the requirement of respect is established as a condition for the entry of states and as an objective of development cooperation and CFSP policies.
  - Treaty of Nice 2001: Modifications on protection in the EU Treaty and on economic, financial and technical cooperation with third parties.
  - 2004 Treaty establishing a Constitution for Europe (Failed): extensive references.

# 5. THE POSITIVIZATION OF HUMAN RIGHTS IN THE EUROPEAN UNION

- The two ways to overcome the lack of legal certainty were:
  - ❖ Accession to the ECHR.
  - ❖ Creation of its own catalog.

## ***5.1. The accession of the European Community to the ECHR***

- [Opinion 2/94 of 28/3/1996](#), on the accession of the Community to the Convention for the Protection of Human Rights and Fundamental Freedoms.
- Treaty of Lisbon: EU legal personality and amendment of the ECHR by Protocol No. 14 Additional to the ECHR (art. 17), 2004.

## ***5.2. The creation of the UE catalog of HR. The Charter of Fundamental Rights of the European Union.***

- European Councils of Cologne and Tampere (1999): human rights catalog.
- Charter of Fundamental Rights of the EU (Nice 2000): value of legal commitment but not binding.
- Treaty of Nice 2001: Declaration on the future of the EU.
- Conclusions European Council Brussels 2007: IGC Mandate to reform constitutive treaties and legally binding Charter.



- Strasbourg 2007: Adaptation of the Charter of Fundamental Rights.

# 6. THE CONFIGURATION OF THE PROTECTION OF HUMAN RIGHTS AFTER THE LISBON TREATY

## **6.1. General provisions**

- Preamble TEU: adherence to the principle of respect for human rights and LLFF.
- Art. 2 TEU: EU values.
- Art. 3 TEU: EU objective.
- Art. 49 TEU: entry requirement.

## **6.2. The legal consolidation of the protection of human rights.**

- Art. 6 TEU: ways to give legal form to the objectives of the general provisions: Recognition of rights, freedoms and principles EU Charter of Fundamental Rights, with the same legal value as the founding treaties.
- Protocol No. 30 on the application of the EU Charter to Poland and the United Kingdom.
- Protocol on the application of the EU Charter to the Czech Republic.
- Scope of application Art. 51 EU Charter.



- Accession of the EU to the ECHR:
  - [Protocol No. 8 on Art. 6\(2\) TEU](#) on the accession of the Union to the ECHR: modalities of participation before the ECtHR and control mechanisms.
  - [Legislative train schedule](#). Negotiations in place.
  - Principles of the Convention as general principles of the TEU.

### **6.3. The requirement for EU Member States to respect human rights**

- Art. 7 TEU: prevention and sanction mechanism.

### **6.4. The protection of human rights in the external action of the EU**

- Art. 3.5 TEU: Objective of the EU.
- Art. 21 TEU: guiding principle of external action.



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