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Human Rights Protection System and its New Integrated Vision at EU Level

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Abstract: This article aims to analyse and disclose the regulatory purport of the so-called New Bill of Human Rights – the EU Charter of Fundamental Rights – as one of the latest sources in the modern international system of human rights protection. It substantiates the necessity of safeguarding the guarantees of fundamental rights enshrined therein, both traditional and those not regulated earlier but universally recognised within the EU's jurisdiction for the first time, through putting in place and operating proper remedies without prejudice to the activity of the Council of Europe in this area. No less attention is paid in the article to identifying certain shortcomings and gaps which not so much undermine the Charter's efficiency as preclude formation and further development of a new regional system within the EU. The article also shows the Charter's importance for the organisation's partner countries and estimates the Charter's prospects for practical application.

Key words: Human Rights Protection System · New Bill of Human Rights · The EU Charter of Fundamental Rights

INTRODUCTION

Unlike the Council of Europe or OSCE, the European Union had until very recently stayed out of those regional organisations under which the international human rights protection system was formed and is operating. Normally, the latter is expected to meet the two principal criteria: firstly, it must be based on a special international agreement (convention, treaty) binding upon the states and secondly, it shall ensure that proper controls are in place [1, p. 35]. In the estimation of many specialists, the above criteria (requirements) are fully met, in a purely European regional context, by the human rights protection system functioning within the European Council (and among other regional institutions – by those functioning under the Organisation of American States and the African Union) [2, pp. 453-475]. The EU absolutely could not be included among them for it was initially designed to deepen economic and political integration of the Member States while human rights had long been out of its priority focus, *i.e.* they represented an area of which the organisation 'cared very little while national states with their diverse traditions of fundamental rights have been dealing therewith for quite long time' [3, pp. 8-9]. However, with the adoption in Nice on 7 December 2000 of the so-called New Bill of Human Rights being in fact the EU Charter of Fundamental Rights and its enactment in accordance with the Treaty on European Union that was brought in compliance with the provisions of the Reform (Lisbon) Treaty and finally agreed upon on 19 October 2007, as well as in line with a new resolution of this supranational organisation approved on 21 November 2008 [4, p. 94], situation in this area has substantially changed. Now, this instrument is, pursuant to the EU constitution (Treaty on European Union, Treaty on the Functioning of the European Union, Reform (Lisbon) Treaty), binding upon not only all of the 27 Member States but also any non-member state that is its partner under their general cooperation framework (*e.g.*, the Programme of the European Commission on Cooperation with the Neighbouring Countries (the European Neighbourhood Policy) and the Eastern Partnership) [4, p. 94]. In particular, Article 6 of the Treaty on European Union, as amended, states that 'the Union recognises the rights, freedoms and principles set out in the Charter' [5, p. 135], it 'shall have the same legal value as the Treaties' [5, p. 135]. Thus, one of the EU constituent agreements not only entrenches a provision that refers to the Charter, but also preserves its status as a freestanding legal act.

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Prerequisites for Adoption of the EU's New Bill of Human Rights: Before and especially after adoption of the Charter when it was still not prescriptive in nature, the EU's official position was that the obligations incumbent upon it in the area of human rights stem from its own internal legal order. This was a limited approach under which the EU was merely under an obligation not to violate human rights recognised at a universal international law level when it acted and effectively only to respect those rights enumerated in the Council of Europe's Convention on Human Rights and Fundamental Freedoms 1950 (Article 103, UN Charter establishes its supremacy over other international agreements and, first and foremost, prioritises the provisions covering human rights and freedoms). 'First, international law regards the EU as bound to guarantee human rights in so far as they exist in customary international law and any EU (primary or secondary treaty-based) law conflicting with rules of *jus cogens* will be considered void' [6, p. 780]. A substantive contribution to the resolution of issues related to fundamental rights protection was made by the European Court of Justice through case law it developed. 'Initially, the Court mainly acted under pressure from national constitutional courts (German in the first place) as the latter disavowed the paramountry of the EU law as long as it did not provide for effective safeguards of the rights' [7, p. 21]. In 1969, the Court recognised such rights as one of the 'general principles of law of the Community,' having divided their sources into three following groups: common constitutional traditions of the Member States, international human rights treaties to which all or substantially all of the Member States were parties and universally recognised principles of international law [7, pp. 21, 22]. Meanwhile, as emphasised by A. Tawhida and I.J. Butler, a possibility existed that the EU could be given authority directly to accede to human rights treaties, to adhere to human rights obligations indirectly, *i.e.* through the prior obligations of its Member States and to guarantee these human rights within its areas of competence (principally through the notion of 'succession' which applies more widely at international level than has been accepted by the European Court of Justice) [6, pp. 771-801]. In aggregate, these imply that the EU must not merely refrain from violating human rights, but also that, within its spheres of competence, it should take positive measures to protect and fulfil human rights.

Prior to adoption of the Charter, the common constitutional traditions were sourced in the relevant legal provisions and safeguards of those states having ensured higher standards of protection of fundamental rights and freedoms of person and received positive evaluation from the Western European lawyers [8, p. 384]. Later on, namely in 1992, they were statutorily established in Section 2(6) of the Treaty on European Union (as then existed). Although, as it stands, the EU was not party to the international treaties on human rights, the European Court of Justice admitted that the organisation was bound by their provisions and principles. Obviously, what is meant here is the UN International Pacts, ILO treaties and conventions in the first place. The 1950 Council of Europe Convention still holds a prominent place in the EU legal system. By one of its resolutions the European Court of Justice has recognised it as the primary source of fundamental human rights and freedoms and in 1992, this principle was reflected in Section 6(2) of the founding treaty of the EU. In other words, as accurately noted by M.L. Entin, 'thanks to the Court's activity, the European Convention on Human Rights and Fundamental Freedoms was recognised as part of the EU law, while constitutional traditions of the Member States continued to be used as general guidelines for interpretation of human rights protection principle under the EU law' [9, p. 214]. However, despite of the fact that the European Court of Justice and the EU, as well as its Member States have confirmed a special role of the 1950 Convention, what has been done is merely reception (or reproduction) of source from the other legal framework. In this regard, such a step of the EU is neither 'justified' by its historical and geographical proximity to the Council of Europe nor by 'circumspection, top-notch legal drafting methodology of the provisions contained in the Convention which have proven effective in practice' [7, p. 23]. Perhaps, the same could also be said by analogy with respect to the universally recognised principles of international law (in particular, as applied to the principle of respect for human rights and fundamental freedoms) enshrined in the UN Charter, the Declaration of Principles of International Law and the Helsinki Final Act of CSCE/OSCE.

All these reveal that, prior to the Charter of Fundamental Rights becoming legally valid, the EU's human rights protection mechanism had had certain gaps. This can be explained by the fact that this mechanism, being initially rooted in case law, heavily depended on the judicial convictions and discretion [10, p. 10]. Further, under such a system, nationals of the Member States had trouble understanding what exactly their fundamental (civil, political, social, economic or labour) rights are and, moreover, it was beyond their power to analyze

sophisticated and voluminous body of the rules of law [10, p. 10] (it is, undoubtedly, within the range of highly qualified lawyers only) [10, p. 10]. In this regard, it was specifically noted in a special report prepared under the instruction of the European Commission, that the 'fundamental rights are only useful when citizens are aware of their existence and availability to them' [11, p. 11]. Therefore, 'declaration and making available of these rights which allow everyone to be aware and avail himself or herself of them, are of fundamental importance' [11, p. 11]. In other words, 'fundamental rights must be visible' [11, p. 11].

As is well known, it's a common practice to *conventionally* group all fundamental human rights and freedoms under three major categories: the rights and freedoms of the first, second and third generations. There are now being brought into existence new rights and freedoms of the fourth generation which have not been regulated before. And notwithstanding the fact that protection of all of the above rights and freedoms has never been a priority area for the European Union and the Council of Europe, they have been (and are being) coherently legally confirmed in the organisation's law. Although it should be noted that the level and scope of their codification are also far from being complete and even.

In this respect, the norms reflected in the Treaty of Rome dated 25 March 1957 that created the European Economic Community are of an unfeigned interest in this context. This can be said because some of the civil and political rights attributable to the first generation have been formulated most clearly and accurately in this very international legal act. Those are, for example, such rights of person as prohibition of discrimination on grounds of nationality (Articles 6, 40(3), 67(1), 68(2)) and right to the freedom of movement (Article 48) [12]. As opposed to it, in the two other treaties – the Paris Treaty of 18 April 1951 establishing the European Coal and Steel Community and the Rome Treaty of 25 March 1957 establishing the European Atomic Energy Community, other similar rights and freedoms were given in far less extensive definitions. In addition, as noted by Yu. Lepeshkov, 'it is obvious that the above rights and freedoms might not be attributed to purely civil and political category unless a certain amount of conditionality is involved which, in its turn, clearly shows significant problems of drawing clear lines between different categories of the rights and freedoms' [13].

On 5 April 1977, the Joint Declaration on fundamental rights was signed by the European Parliament, the Council of Ministers and the Commission of the European Communities in which they stated the necessity of respecting the fundamental human rights and freedoms and affirmed that they do and will do their utmost to protect them [14, pp. 1-2].

The Single European Act adopted on 17 February 1986 was confined to merely mentioning human rights and commitment to fundamental social rights (preamble) [15] which were already included back in 1961 in the text of the European Social Charter signed within the framework of the Council of Europe and enacted on 26 February 1965 [16]. Four years later, proper important political instruments were adopted through joint efforts of the Member States and supranational institutions of the European Communities – the Charter of Fundamental Rights and Freedoms and the Community Charter of Fundamental Social Rights for Workers. The first instrument provided for an extensive list of appropriate rights and freedoms of human and citizen, their safeguards and, not least importantly, the democracy principle (Article 17) [17]. The Charter which is, according to its preamble, is a declaration at the same time [18], established such socio-economic rights of the hired workers as the right to social protection (Article 10), the right to strike (Article 13), the right to freedom of movement (Article 1), the right of association in trade unions (Article 11) and other rights [18]. However, these acts which initially had declaratory, political significance, were not given the status of international treaties that have a legally binding nature in the EU's legal framework.

With the signing on 7 February 1992 in Maastricht (the Netherlands) of the Treaty on European Union, many of the fundamental rights became more accessible to every individual, such as the right to citizenship (Article 8), the right to vote and to stand as a candidate at municipal elections and in elections to the European Parliament (Article 8b), right to protection by the diplomatic or consular authorities (Article 8c), right to address a petition to the European Parliament (Article 138d), right to move and reside freely within the territory of the EU Member States (Article 8a) and others [19]. Additionally, the Social Policy Protocol was adopted as an annex to the Treaty which in its turn has its own annex in the form of an Agreement under the same name. Like the Maastricht Treaty, these acts also greatly expand

the scope of the human rights although mainly in the areas of education, professional training, healthcare and youth policy (Articles 126, 127, 129) [19].

Human rights continue to acquire more importance in the internal policy of the EU in the following period during the early and mid-1990s. This is witnessed by the Treaty of Amsterdam dated 2 October 1997 which 'confirms the respect for human rights as a Community objective' [20, pp. 468-490]. Article 6(1) of the Treaty (the Maastricht Treaty as amended by the Treaty of Amsterdam) established a provision pursuant to which the EU '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' [19]. Article 7 (again, the Maastricht Treaty as amended by the Treaty of Amsterdam) for the first time provided for possibility for the EU Council to suspend certain of the rights deriving from the application of the Treaty to a Member State, if the existence of a serious and persistent breach by the Member State in question of principles mentioned in Article 6(1) is determined [19]. In addition, a new rule has been officially established with the adoption of the Treaty of Amsterdam which requires that only that European State may apply to become a member of the EU which respects the principles set out in Article 6(1) [19].

However, the role of the Treaty of Amsterdam 1997 in the area of reinforcement of human rights protection mechanisms is not limited by the above. By further elaborating on the normative provisions of the Maastricht Treaty, it amends the Treaty of Rome 1957 establishing the European Economic Community: Article 13, simultaneously with establishing the equality between men and women, expands the list of discriminations it prohibits (thus adding to discrimination based on nationality other discrimination types based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation [12]); Article 63 for the first time sets forth the measures the EU Council is to take within five years of the Treaty of Amsterdam becoming effective in the context of implementation of asylum and immigration policies [12].

Human rights gradually becoming one of the EU's external policy priorities is also confirmed by the following: by 1995, the organisation had entered into over 30 bilateral agreements with partner countries whereby it puts a special emphasis on the necessity to promote and respect the rights and fundamental freedoms of person. For example, in Title I (General Principles) of the Partnership and Cooperation Agreement between the European Communities and their Member States and the Republic of Kazakhstan dated 23 January 1995 (effective 1 July 1999) it is stated that 'Respect for … human rights as defined in particular in the Helsinki Final Act and the Charter of Paris for a New Europe, … constitute[s] an essential element of partnership and of this Agreement' (Article 2) [21]. At a later stage, this cooperation course has found its reflection in the "Path to Europe" 2009-2011 State Programme approved by the Presidential Decree of the Republic of Kazakhstan dated 29 August 2008 as to the humanitarian dimension. Emphasising that '… the development of multilateral cooperation with European countries is of real strategic interest' for Kazakhstan (n. 3) [22], the Republic undertook to provide for 'the development of partnerships between civil society actors in Kazakhstan and those in Europe, which will promote the integration of national civil society institutions into the international community, the realisation of social, cultural, educational and information/promotional projects in the context of Kazakhstan's national interests, the further development of social partnerships' [22]. Another area of cooperation with the European countries also lies in 'experience exchange in the field of inter-ethnic and inter-confessional accord which allows Kazakhstan to promote its positive experience in the creation of mechanisms for inter-ethnic and inter-confessional accord and to contribute to the formation of a tolerant Eurasian community' [22]. In addition to this, provision is made for 'the development of a balanced gender policy in Kazakhstan – employing Europe's experience' [22]. The seriousness of Kazakhstan's intentions in its relationships with the EU in the area of human rights protection was confirmed by its accession to the EU Statement on Abolition of Death Penalty on 19 December 2006 during the 61st Session of the UN General Assembly.

In 1999, the EU Council published the first comprehensive Annual Human Rights Report in preparation of which a special Subcommittee on Human Rights under the Political Committee[1] of the European Parliament was actively involved. The mandate of the Subcommittee includes liaising with non-governmental organisations dealing with the human rights protection issues and drafting the relevant Parliament's resolutions concerning the status (or condition) of the human rights in certain country in the world.

With a view to creation of a proper system of protection of the human rights and fundamental freedoms within the EU system, a special body, the Fundamental Rights Agency was formed on the basis of the then

[1] In accordance with Article 25 of the Treaty on European Union, currently this Committee is abolished and replaced by the Political and Security Committee with a wider mandate.

existing European Monitoring Centre in March 2007. Its activity is governed by the relevant Regulation enacted on 1 March 2007, under which the Agency is mandated with assisting the EU and its Member States in addressing any issues related to enforcement and protection of human rights. In this, it is to be aided by the European Ombudsman [23] and the European Data Protection Supervisor functioning since January 2004.

The Role and Importance of the EU Charter of Fundamental Rights in the Modern Human Rights Protection System: In connection with the adoption of the Treaty establishing a Constitution for Europe in October 2004, the Charter of Fundamental Rights, 2000 was fully incorporated, with certain amendments, into the Treaty's official text, thus structurally becoming one of its four parts.

So do all of the abovementioned acts, including their political recommendatory and jurisdictional types, as well as special bodies, mean that an independent regional system of protection of rights of human and citizen has been formed within the EU? And do they create immediate rights for individuals in terms of the two overarching criteria mentioned in the preceding section of this article? The answer can be firm no, however, one should take into account and should not underestimate their special unambiguous place they take in the general law enforcement mechanism of the EU. In due course some regulatory authorities, particularly, the Fundamental Rights Agency might really promote the creation within the EU of its own human rights protection system. At the same time, the other thing is objectively obvious: recognition and protection given to the fundamental rights in many isolated acts 'will not lift but to the contrary amplifies the necessity of codifying these rights in a single written source the text of which will be accessible to (and understandable by!) an ordinary individual' [7, p. 36]. This was embodied in the Charter of Fundamental Rights 2000 which, looking into the future, 'allowed to clearly determine what it is, namely an instrument to enforce the standards of respecting the fundamental rights by institutions and Member States as they apply the EU law,' said A. Vitorino, the European Commission representative to the Convention [24, pp. 5-6] – the body which drafted the Charter. In other words, one can say that in the modern conditions, the EU is 'simply unthinkable of without the primary, fundamental human rights, without their real and effective protection' [13] outside the Charter. A new (restated) Charter was solemnly proclaimed on 12 December 2007 in Strasbourg by the same three EU institutions which had adopted it seven years ago – the European Parliament, the Council and the Commission and replaced the previous edition that was in effect since the enactment of the Lisbon Treaty. Legal force, general interpretation rules and notes to the Charter were determined in Article 6(1) of the Treaty on European Union. The instrument was assigned an official number 703 which refers to the year, series and issue of the EU Official Journal (2007/Ñ303/01). And, although the text of the Charter has not been directly included into the text of the Reform (Lisbon) Treaty, its provisions 'extend to virtually every area of activity in the EU' [4, p. 96]. This is, according to the experts, 'necessary to monitor the compliance of the directives and other instruments of the EU with the principles of the Charter' [4, p. 96].

Its enactment as a legally binding instrument now implies that it is not only regarded as one of the 'common principles' of the Union but also as an international law custom that reproduces provisions of the existing international treaties to which the EU Member States are parties. At the same time, the Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights [25, p. 303/2]. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter [25, p. 303/2] and updated under the responsibility of the Praesidium of the European Convention[2] [26]' (Preamble to the Charter)[3] [27]. A particularly clear

[2] Reference is made to a special Convention chaired by Roman Herzog, former President of Germany, which drafted the Charter during the period between December 1999 to October 2000. The meeting was composed of the EC President, 16 Members of the European Parliament, 30 members of the national parliaments of the European Union, representatives from European Union member state governments.

[3] Reference is made to the European Convention chaired by Valéry Giscard d'Estaing which drafted the EU Constitution during the period between February 2002 to July 2003, which was signed on 29 October 2004 under the name 'Draft Treaty establishing a Constitution for Europe' (although never enacted, it served as the basis for the Reform (Lisbon) Treaty 2007).

conclusion which can be inferred from the foregoing is that, as the Charter emphasises in its Preamble (and also in Articles 52(3) and 53 of the officially approved text) an organic link with the Council of Europe's Convention on Human Rights and Fundamental Freedoms 1950, it provides for interpretation of its own provisions through the 'letter and spirit' of that regional act, as well as through case law developed by the EU Court of Justice and the European Court of Human Rights.

The Charter of Fundamental Rights 2007 'has substantially modified the existing approach to the classification of fundamental human rights and freedoms by departing from the recognised 'classical' approach to their classification [13], for example, as the rights of the first and second generation. It is more based on the doctrinal classification of the rights and freedoms and, subsequently, groups the latter into the following three categories: personal, political and socio-economic. At the same time, it should be noted that they are not arranged in direct accordance with these types. All fundamental rights provided for by the Charter have been categorised and systematised by reference to such fundamental values as dignity (Chapter I), freedoms (Chapter II), equality (Chapter III), solidarity (Chapter IV), citizens' rights (Chapter V), justice (Chapter VI). Chapter VII is devoted to general provisions regulating the interpretation and application of the Charter. Total count of Articles in the Charter is 54. Thus, we can say that structurally the Charter determines the order of arrangement of the rights and freedoms, as well as their safeguards, in a consistent and distinct manner.

Content-wise, the Charter prioritises the personal dignity (Chapter I). The first five Articles set out the rights which ensure that an individual can sustain his or her life (the right to human dignity, the right to life, the right to integrity of the person, prohibition of torture, slavery and forced labour). Of course, they are personal only by nature and are natural by origin. Next Chapter II (Freedoms) consists of 14 Articles and includes both personal rights (*e.g.*, right to respect for private and family life (Article 7), freedom of thought, conscience and religion (Article 10), political (in particular, freedom of assembly and of association (Article 12), right to asylum (Article 18)) and socio-economic, including cultural rights (such as freedom to choose an occupation and right to engage in work (Article 15), right to property (Article 17), freedom of the arts and sciences (Article 13). As experts note, this Chapter 'is mainly about negative rights, *i.e.* the right to non-intervention by authorities and others in the person's life, or the right that prohibits any infringement on the essential material and spiritual elements of the person's wellbeing' [7, p. 36]. The third Chapter of the Charter consisting of seven Articles establishes the equality as a key principle for the purposes of giving equal rights to different categories of individuals: men and women, children, senior citizens, disabled people, persons pertaining to certain race, nationality, religion, language or cultural community etc. In the forth Chapter (Solidarity) embracing 12 Articles, there are provisions covering mainly labour and other related (social) rights of workers. Only three of them differ (Articles 36, 37, 38) as they address the issues of environmental protection, consumer protection and access to services of general economic interest. The fifth Chapter (Citizens' Rights) of the Charter (Articles 39-46) not only incorporated the existing provisions of the Maastricht Treaty but also, as it appears, unlike the preceding chapters, legally established the EU citizens' rights only (such as the right of access to the documents of the Union's institutions, organs and authorities (Article 42). The sixth Chapter (Justice) (Articles 47-50) established criminal and procedural safeguards of the person's rights and freedoms. Finally, the seventh Chapter is wholly devoted to the Charter's operation in time, space and scope of persons.

It was made clear in the Charter that in light of the evolution of the society, social progress, scientific and technical development and in this context economic, social, political and all other expanding areas of the EU activities, the latter is henceforth more infused with humanitarian content. In other words, by setting its course to intervention in the area of human rights and freedoms, the EU regards an individual not only as a subject of regulation but also grants him or her the status of a person in law who has his or her own various interests and capacity to protect the rights and freedoms he or she possess. Moreover, grant of certain rights or freedoms is not linked by the Charter to the nationality of individual. In this sense the Charter may be called 'the Charter of Fundamental Rights of Human and Citizen.' This means that honouring and protection of fundamental rights provided for by the Charter extends not only and rather than to the citizens of the EU Member States but also to certain extent to the foreign citizens visiting or residing in the territory of the EU Member States. References to this are contained, in particular, in Articles 15, 18, 19 and 45 of the Charter. For example, in accordance with 15(3), 'nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union' [25, p. 303/5]; under Article

45, they, if 'legally resident in the territory of a Member State,' may be granted 'freedom of movement and residence' [25, p. 303/11]. As regards the citizens of the EU Member States themselves or, as defined in Articles 39-46 of the Charter, every citizen of the Union, in addition to traditional civil, political and other rights, there are additional rights and freedoms in the areas of science and arts (Article 13), safeguards of respect of cultural, religious and linguistic diversity (Article 22). The Charter also establishes rights of such categories of persons as children (child) (Article 24), senior citizens (Article 25), persons with disabilities with social integration (Article 26).

The workers and their collectives have neither fallen out of the scope of the Charter and regulation thereunder and, therefore, that of the EU bodies. This is evidenced by the Charter's Chapter IV whereby Articles 27-38 establish the most significant collective rights of employment, economic, social, medical, environmental nature requiring two or more persons to exercise. Some of such rights (such as the right to receive information and consultation within the organisation (Article 27)) were introduced to the EU legal system for the first time. The Article itself states that 'workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices' [25, p. 303/8].

It should be specifically noted that, unlike any of the declarations, acts and charters considered earlier, which were adopted predominantly for the purpose of protecting a human against unlawful acts of national authorities and management, the Charter aims at securing protection of fundamental rights and freedoms against possible arbitrary actions of supranational structures – institutions and bodies of the EU. All of them were defined by the Reform (Lisbon) Treaty enacted on 1 December 2009 as institutional or unipersonal bodies. Among them are the European Parliament, the EU Council and its Chairman (President), the European Commission and its President, the Committee of the Regions etc. In case of violation of the rights and freedoms guaranteed by the law of the Union, every person is not only entitled to effective remedy before a tribunal (Article 47), but may also refer any case to the Ombudsman of the Union (Article 43) and petition the European Parliament (Article 44). Obviously, all these provisions were included in the Charter in no small measure to improve efficiency of general integration processes and to facilitate adoption of the resolutions the Union needed. However, there is no doubt that, on the other hand, the system of various legal protection procedures will also promote formation and development of a regional system of protection of the rights and freedoms of the EU nationals and so determine compliance of activity of all bodies of the organisation with the evaluation criteria set out in the Charter. At the same time, it should be noted again that the Charter establishes no special judicial authority to protect fundamental rights, as this, for example, was done by the Council of Europe in establishing the European Court of Human Rights based on the appropriate European Convention 1950. Notwithstanding a number of existing institutions, the EU Court of Justice still remains the main tool for practical application of such protection under the Charter. To properly support the aforesaid, let us look at the following two facts as the relevant examples of the EU Court of Justice judgments. But before we proceed, it should be noted that in accordance with Article 263 (formerly Article 230) of the Treaty on the Functioning of the European Union, 'any natural or legal person may institute proceedings against an act addressed to that person or which is of direct and individual concern to them and against a regulatory act which is of direct concern to them and does not entail implementing measures' [26, p. 347]. Also, if the claim is legitimate, the EU Court of Justice declares the act in question null and void. For instance, in 2010, an Austrian citizen Cornelia Trentea brought a claim before the EU Court of Justice against the EU Agency for Fundamental Rights. The subject matter of the case was that C. Trentea, after having read an announcement in press regarding a vacancy in the Agency, applied for a post of administrative assistant in the procurement and finance fields. However, in spite of accepting her candidature, on 5 July 2010 she was notified that another person had been appointed. The statement of claim alleged a breach of the principle of equality, principle of good governance and Article 41 of the EU Charter of Fundamental Rights with respect to the appellant. By its judgment of 2 November 2010, the Court satisfied the appellant's claim, annulled the decision of the Agency rejecting her candidature and ordered moral damage to be paid in amount of EUR 10,000 [31]. Another case where the claim was brought by Alexander Mai in 2011 for breach of the Charter provisions was decided by EU Court of Justice in favour of the appellant under Article 21 of the EU Charter [32].

Activity of the European Commission may be named as an additional mechanism of protection of fundamental rights enshrined in the Charter. Under the Strategy for the effective implementation of the Charter, the Commission

is also authorised to ensure observance of the fundamental human rights and freedoms in three main areas: first, to guarantee support to the Union's fundamental rights; second, to inform citizens. In this connection, the Commission informs the citizens on how to restore their rights and to which authorities to apply in case their Charter rights are infringed. From 2011 on, this information sharing procedure is implemented through a new portal. The third area is designed to conduct monitoring and annual reporting procedure by the Commission on the implementation the Charter is regarded as the principal means of such monitoring.

In order to make all provisions of the Charter clear, the relevant explanations were initially developed under the supervision of the Praesidium of the Convention which drafted the same in 2000. By 2007, explanations were 'updated under the responsibility of the Praesidium of the European Convention subject to the amendments made by the Convention to the text of the Charter (in particular, Articles 51 and 52) and subject to the further development of the Union' [26, p. 570]. Normally they have no legal force, but 'serve as a valuable means of interpretation' [26, p. 570] of the Charter. At the same time, according to Article 52(7) of the Charter, 'the explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States' [25, p. 303/8]. It shall be noted that any explanation to any Article of the Charter shall be based on certain sources comprising the law of the European Union and their careful analysis. To speak more specifically, let us say that the question is about the EU Court of Justice judgments (court practice), corresponding norms (rights) guaranteed by the Articles of the European Convention on Human Rights and Fundamental Freedoms 1950 and other acts (in particular, Convention on Human Rights and Biomedicine) of the Council of Europe, agreements integrated into the achievements of the Union (*e.g.*, Convention implementing the Schengen Agreement), the agreements establishing European Community and the directives of the relevant EU institutions.

To support our point of view, let us name a few examples of the above sources which reinforce the substantial part of the explanations to certain provisions of the Charter. For example, to explain the Article of the Charter named 'Human Dignity,' the Praesidium of the European Convention applied the Judgment of 9 October 2001, Netherlands v. Parliament and Council (C-377/98, ECR 2001 p. I-7079) [27], in which the EU Court of Justice reaffirmed that the fundamental right to human dignity is part of the subject matter of the rights included in the Charter and, therefore, it may not be encroached upon even if the right is restricted [28]. The principles contained in Article 3 of the Charter (Right to the integrity of the person) are already reflected in the Convention on Human Rights and Biomedicine adopted within the framework of the Council of Europe (STE 134 and additional protocol – STE 168). Based on this Convention, the Charter prohibits only reproductive cloning and thereby authorises and does not prohibit other statutorily permitted types of cloning [28]. The right contained in Article 4 of the Charter (Prohibition of torture and inhuman or degrading treatment or punishment) corresponds to the law guaranteed in Article 3 of the European Convention on Human Rights and Fundamental Freedoms 1950 and is formulated in similar language ('no one shall be subjected to torture or to inhuman or degrading treatment or punishment') and therefore, it has the same meaning and implication as Article 3 of the European Convention [28]. To explain Article 5 (Prohibition of slavery and forced labour), the Praesidium of the European Convention used, in particular, Chapter VI of the Convention implementing the Schengen Agreement, of which Article 27(1) contains the following formulation: 'The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens' [29]. For these purposes, it is also noteworthy that on 19 July 2002, the EU Council adopted the Framework Decision on combating trafficking in human beings (JO L 203 du 1.8.2002, p.1), Article 1 of which clearly determines crimes related to human trafficking for the purposes of exploitation of their labour or sexual exploitation, which must be made by the Member States punishable in pursuance thereof [28]. Article 8 of the Charter (Protection of personal data) was based, in particular, on Article 286 of the Treaty Establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (JO L 281 du 23.11.1995, p.1) [28]. It shall be generally noted that, with reference to the content of certain Article of the Charter, certain rights or freedoms established by it either have the same meanings as reflected in the relevant agreement or are wider in operation. Thus, the latter aspect distinguishes the

Charter more favourably from the rest of conventions and agreements, as it can be applied not only at the European level but it can also be introduced as an achievement to the laws of any non-European regional organisations.

Steps to Be Taken to Enhance Legal Status of the EU Charter of Fundamental Rights: Meanwhile, the Charter also has certain shortcomings. A careful examination of the text of the instrument shows that some of the Articles, unlike others, are formulated at a less loyal level. More specifically the above relates to Articles 1, 2, 4, 5, 6, 7, 9, 13, 16, 22, 25, 26, 29, 30, 37, 38, 40, 44 and 48 (total of 19 Articles). In all of the specified Articles, the rights which are fundamental to human and citizen are formulated either briefly or very briefly (*e.g.*, Article 29 only states that 'Everyone has the right of access to a free placement service' [25, p. 303/8], leaving it open how the Union should ensure its implementation in general). Being thus confined to mere laconism of the formulations and proclamation of certain right, or certain freedom (and having no regard to its personal, political and socio-economic nature), the Charter creates unequal conditions among all opportunities of human and citizen which are established and guaranteed thereby. Based on the factual circumstance that all, without exclusion, of the rights and freedoms contained in the Charter were recognised by its drafters and adopting institutions of the EU as fundamental (otherwise they would not have been included in the instrument), we calculate as follows: all of them must have equal weight and equal importance both in terms of the necessity of reinforcement of formulation and in terms of legal protection. In this connection, the term 'limitation' in the context of Article 52 of the Charter shall be interpreted subject to reservation (thus, in accordance with paragraph 1 of the above Article, 'Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and *respect the essence of those rights and freedoms*' [25, p. 303/8] ***(emphasis added)***.

Apart from the necessity to polish the formulations, the question is also about that the text of the Charter must be supplemented with 'new rights and freedoms' (and, accordingly, new Articles), which, as mentioned earlier, have been already established in separate international treaties and are being successfully applied in practice within the framework of development of the so-called 'fourth generation of human rights.' We should not also forget about those of the rights and freedoms the Charter lacks which had been proposed most frequently prior to its becoming legally effective: these are, for instance, the rights of minorities (they are mentioned only indirectly in Article 21 of the Charter which is entitled 'Non-discrimination'), the right to a fare remuneration, the right to an equal salary, the right to a guaranteed minimum wage (which are also only indirectly mentioned in Article 33 of the Charter). A special attention was drawn by ex-head of the Roman Catholic Church, Pope John Paul II, to the necessity of improvement of the Charter as regards the determination of the place of religion, protection of family and moral values in the society. Criticising the Charter in this regard, he noted that in many European countries support had been given in favour of 'pro-abortion policy, … a lax attitude towards euthanasia and draft legislation concerning genetic engineering technologies' [30, p. 17]. But the Pope was also greatly disappointed 'at the lack of any reference in the Charter to God which is the supreme source of human dignity and people's fundamental rights.' [30, p. 17]. Taking into account that in some of the EU Member States (*e.g.*, in Spain and France (the Basque Country, Catalonia, Corsica), in the UK (Scotland), in Italy (Lega Nord), there exists the issue of granting real collective right to secession (to separate beyond its own framework of right to local and regional autonomy), it is also necessary to address, within the legal framework, the issue of determination and mechanisms for implementation of the right to self-determination. Although not all but some of the above rights could, to the extent they may not be included in the Charter for some reason, be protected either in the context of a wider interpretation and clarification by the EU Court of Justice of a certain Article or to the extent that the Union or its Member States are full-fledged parties to the relevant international treaties in which the rights and freedoms lacking in the Charter are established.

One of the options to introduce amendments to the Charter is its immediate and full integration into the amended (restated) founding treaties of the EU. So far, as is already known, the Charter not only preserves an independent status out of the scope of those instruments but also has no provisions concerning implementation of this procedure. Has the Charter been included into one of the founding acts as a separate chapter (rather than being confined to a mere reference or affirmative authorisation of compliance), it could be possible in future to revise the Charter whether in part or in full. Otherwise, as noted by the Russian experts in the EU law, 'the Charter is at risk of turning into a frozen monument of law, which will gradually lose its connection with the changing values and needs of the society' [7, p. 53].

CONCLUSION

In conclusion, we would like to draw a special attention to the importance and future prospects of the Charter for separate non-EU states, particularly, for such a post-Soviet country as Kazakhstan. These aspects have been analyzed in more detail by a researcher from this country, Zh. M. Amanzholov in one of his articles. Keeping in mind the binding nature of the Charter for the EU partner countries as well, he poses a justifiable question: Must Kazakhstan follow the EU course while not being fully integrated into its policy and economic model, as distinct from the other EU partner countries [4, p. 96], for example, as distinguished from former Soviet Republics of the Eastern Europe and Southern Caucasus involved in the European Neighbourhood Policy and the Eastern Partnership Programme? The author answers this question positively, but attaches to it certain reservations at the same time.

First of all, extension of legal force of the Charter to the Republic in question, in the author's opinion, must be conditional upon it becoming a full-fledged participant of the European Neighbourhood Policy which, in its turn, will connect the other Central Asian states to this specific area of cooperation. By doing so, Kazakhstan will be included in the 'Eurosphere' or the area of interest in the surroundings of the new EU neighbours' [4, p. 99].

Secondly, if Kazakhstan effectively proclaims its commitment to the rule of law and confirms its preparedness to assume obligations to observe the rights and freedoms of human and citizen under the EU Charter 2007, it may suggest certain ways of such incorporation [4, pp. 99, 100]. This might be achieved through either including the obligation to observe the Charter in the new Treaty to be signed with respect to an advanced partnership between Kazakhstan and the EU or reflecting the same as the parties may mutually agree in a joint statement, joint communiqué, memorandum or any other similar legal act [4, p. 100]. Zh. M. Amanzholov sees it 'apparent that the most correct way, both technically and legally, would be establishing a special provision in the new Treaty on partnership and cooperation between the Republic of Kazakhstan and the EU' [4, p. 100] which will directly require observance of the Charter of Fundamental Rights. This proposal perfectly fits in with anticipated 'legal arrangements concerning the privileged relationships of the two parties as flows out of Article 8 of the Treaty on EU' [4, p. 100].

However as the author says, 'the Republic of Kazakhstan, acknowledging in general the importance of the Charter in the international legal system of protection of the rights and fundamental freedoms of human and its place in the hierarchy of the sources of law of the EU, might at the same time duly take into consideration the particularities of the national legislation and national practice and, accordingly, adopt measures proper in terms of application of the provisions of this instrument' [4, p. 100]. Therefore, Kazakhstan 'might follow the example of such EU Member States as Poland, UK and the Czech Republic which made a number of reservations and qualifications within the framework of their own national jurisdictions upon ratification of the Reform (Lisbon) Treaty' [4, p. 100] by way of singing relevant declarations (the Czech Republic, for instance, reflected its own individual approach to the Charter in the 'Declaration by the Czech Republic on the Charter of Fundamental Rights of the European Union' (Declaration 53). That said, however 'it should be emphasised that everything in this question depends on the agreement of the parties' will' [4, p. 101] and in no small measure on Kazakhstan itself and its determination.

In the long view, the Charter of Fundamental Rights adopted in the name of all EU Member States, might become for Kazakhstan and other non-EU countries from other regions of the world that special regional legislative act which will conveniently add a new meaning to the notion of 'national values' which, as the subject matter of national security of the EU Member States and their aggregate spiritual, intellectual and material property, perhaps, will also be included into their respective normative legal acts, in particular, those of the Republic of Kazakhstan, for example, into the Law 'On National Security of the Republic of Kazakhstan as amended in 2011' [4, p. 95]. The Charter may also be useful for development and adoption of legal acts within the framework of such international regional organisations as OSCE, CIS, SCO, OIC, a member of which is Kazakhstan and to which it delegates part of its powers by virtue of its membership [4, p. 96].

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