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## **Insights into the Evolution of Fundamental Rights in the European Union Legislation**

**Keywords:** human rights, fundamental rights, Reform Treaty, Charter of Fundamental Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms

**Słowa kluczowe:** prawa człowieka, prawa podstawowe, traktat rewizyjny, Karta Praw Podstawowych, Europejska Konwencja Ochrony Praw Człowieka i podstawowych wolności

### **Abstract**

This paper analyzes how the approach of the European Union to the protection of fundamental rights evolved. It focuses on primary legislation, which ranks highest in the hierarchy of EU sources of law. For this purpose, the author examines the Founding Treaties, the Reform Treaties, and the Charter of Fundamental Rights. The paper focuses on modifying the Treaties due to the complexity of the subject matter. The considerations discussed in this paper set the ground for the outline of the formation of a multi-level system of human rights protection in the European Union, as well as for the presentation of the current state of the law, which undoubtedly constitutes an important contribution to the regulation of the issue discussed.

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**Streszczenie****Ewolucja ochrony praw podstawowych w aktach prawa pierwotnego Unii Europejskiej – wybrane zagadnienia**

Niniejszy artykuł stanowi analizę ewolucji podejścia Unii Europejskiej do kwestii ochrony praw podstawowych. Opracowanie skupia się na aktach prawa pierwotnego stojących najwyżej w hierarchii unijnych źródeł prawa. W tym zakresie przeanalizowano pod tym kątem traktaty założycielskie jak i traktaty rewizyjne a także Kartę Praw Podstawowych. Z uwagi na złożoność zagadnienia i ograniczenia objętościowe niniejszej publikacji skonkretyzowano się na kwestiach dotyczących modyfikacji treści Traktatów. Na podstawie dokonanych rozważań zakreślono proces kształtowania się wielopoziomowego systemu ochrony praw człowieka w Unii Europejskiej a także aktualny stan prawny, który stanowi niewątpliwie istotny wkład w uregulowaniu tego aspektu.

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As initially drafted, the Treaties establishing the EC did not contain explicit provisions on fundamental human rights. Individuals were guaranteed only such rights (of a ‘fundamental’ nature) as were necessary to ensure the achievement of the EC’s economic objectives<sup>3</sup>. The Treaty of Rome of 1957, founding the European Union, provided only for the prohibition of discrimination based on nationality and the prohibition of wage discrimination based on sex. However, both of these rights have been treated instrumentally as additional guarantees of Communities’ economic freedoms rather than as values in themselves<sup>4</sup>.

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<sup>3</sup> A. Wyrozumska, *Jednostka w Unii Europejskiej*, [in:] *Prawo Unii Europejskiej. Zagadnienia systemowe*, ed. J. Barcz, Warsaw 2002, p. 337. As Biernat and A. Wasilewski wrote: “Since the documentation of the preparatory work has not been disclosed, it is difficult to unequivocally say why the said provisions were omitted from the Treaties. We can assume that the authors of the Treaties intended to limit their scope to economic issues as the concept of European political and military communities had failed in the early 1950s”. S. Biernat, A. Wasilewski, *Wolność gospodarcza w Europie*, Kraków 2000, p. 187.

<sup>4</sup> P. Filipek, *Art. 6*, [in:] *Traktat o Unii Europejskiej. Komentarz*, ed. K. Lankosz, Warsaw 2003, p. 118.

That was due to the adoption of the European Convention on Human Rights and Fundamental Freedoms (ECHR) by the Council of Europe in 1950. The founding countries of the European Coal and Steel Community, the European Economic Community, and the European Atomic Energy Community were and are parties to it. Hence the opinion prevailed that the Council of Europe should attend to fundamental rights. However, later on, the Communities considered the state of affairs unsatisfactory. The European Court of Justice's (ECJ) ruling acknowledged the primacy of Community law over the internal law of the Member States that gave rise to reflection on strengthening the protection of fundamental rights. At that time, fundamental rights, protected by the internal law of the Member States, were not effective about legal acts and decisions made based on the Community law. Accordingly, the burden of examining the compatibility of the law of the Community bodies with the catalog of fundamental rights guaranteed by the constitutions of the Member States has been taken on by their constitutional courts<sup>5</sup>.

Until 1986, constitutional courts of the Member States, following the decision of the German Federal Constitutional Court of May 29, 1974 (the so-called *Solange I*), decided that they would continue to review the compatibility of acts and deeds issued by the Community bodies with the fundamental rights guaranteed by the Constitution<sup>6</sup> until the Communities adopt an appropriate catalog of rights and relevant control mechanisms<sup>7</sup>.

The German Federal Constitutional Court found in its ruling of 1974 that fundamental rights are not sufficiently protected at the Community level. It is because the European Parliament had not adopted a catalog of such rights corresponding to those guaranteed by national constitutional orders. Case-law of the ECJ cannot replace such a catalog, as it is subject to change and does not sufficiently meet the requirement of legal certainty. (...) accordingly,

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<sup>5</sup> M. Berdel-Dudzińska, *Karta Praw Podstawowych Unii Europejskiej – geneza, status prawny, podstawy aksjologiczne*, [in:] *Prawo i ustroj Rzeczypospolitej Polskiej w perspektywie integracji z Unią Europejską*, eds. M. Grzybowski, M. Berdel-Dudzińska, Rzeszów 2002, p. 69.

<sup>6</sup> For more information, see: A. Wyrozumska, *Ochrona praw podstawowych w Unii – problemy pluralizmu porządków prawnych*, [in:] *Suwerenność i ponadnarodowość a integracja europejska*, ed. J. Kranz, Warsaw 2006, pp. 151–153.

<sup>7</sup> M. Piechowiak, *Aksjologiczne podstawy Karty Praw Podstawowych Unii Europejskiej*, "Studia Prawnicze" 2003, vol. 1, p. 8.

it [the German Federal Constitutional Court] claims the jurisdiction to resolve conflicts between national constitutional principles and Community rules<sup>8</sup>.

The thesis of this ruling was overturned by the ruling of 1986, the so-called Solange II. Given the changes that had taken place in Community law since the 1974 judgment, the Federal Constitutional Court concluded that respect for fundamental rights was ensured in Community law, and it suspended its right to review the constitutionality of Community law<sup>9</sup>.

In the European Communities/European Union treaty law, the term 'fundamental rights' first appeared in the preamble to the Single European Act (SEA)<sup>10</sup>. Previously, this concept was known only in the case-law of the Court of Justice and non-legally binding documents<sup>11</sup>. As soon as SEA entered into force, the term was used in documents comparable with agreements.

The Maastricht Treaty of February 7, 1992, establishing the European Union, also mentions fundamental rights<sup>12</sup>. According to Art. A<sup>13</sup>, the Union was founded on three elements: European Communities, the European Coal and Steel Community, the European Community (formerly EEC), the European Atomic Energy Community (so-called first pillar), the Common Foreign and Security Policy and cooperation in the area of Justice and Home Affairs (the second and third pillars).

The said article also determines the nature of the European Union by stating that: "This Treaty marks a new stage in the process of creating an ever-clos-

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<sup>8</sup> A. Płachta, *Zasada ochrony praw podstawowych*, [in:] *Stosowanie prawa Unii Przez sądy*, ed. A. Wróbel, Kraków 2005, p. 368.

<sup>9</sup> W. Czapliński, R. Ostrihansky, P. Saganek, A. Wyrozumska, *Prawo Wspólnot Europejskich. Orzecznictwo*, Warsaw 2005, p. 342.

<sup>10</sup> In its preamble there is the following wording: "Determined to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice". *The text of SEA*, [in:] *Jednolity Akt Europejski. Zagadnienia prawne i instytucjonalne*, eds. J. Barcz, A. Koliński, Warsaw 1991, p. 73.

<sup>11</sup> As exemplified in the Joint Declaration of the European Parliament, the Council and the Commission of April 5, 1977 on Fundamental Rights, OJ of the European Communities 1977 C 103/1.

<sup>12</sup> *The text of the Treaty*, [in:] *Dokumenty Wspólnot Europejskich*, eds. A. Przyborowska-Klimczak, E. Skrzydło-Tefelska, Lublin 1994, pp. 316–334.

<sup>13</sup> *Ibidem*, p. 319.

er union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen”<sup>14</sup>.

The Maastricht Treaty refers to respect for human rights in its preamble, where the Member States reaffirm “their attachment to the principles of liberty, democracy, and respect for human rights and fundamental freedom”. While Art. F(1) reads: “The Union shall respect the national identities of its Member States, which government systems are founded on the principles of democracy”. Paragraph 2 adds that: “The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4, 1950, and as they result from the constitutional traditions common to the Member States, as general principles of Community law”<sup>15</sup>.

The protection of human rights is also enshrined in Title V of the Treaty of the European Union (TEU), as one of the objectives of the Common Foreign and Security Policy (Art. J.1.(2), now Art. 11 of TEU). Additionally, Title VI refers to the European Convention on Human Rights as an indicator for the correctness of Member States’ actions in the area of justice and home affairs (Art. K.2.(1))<sup>16</sup>.

It needs to be added that the Maastricht Treaty also contains a provision indicating the establishment of citizenship of the Union. According to Art. B of the Treaty, one of the objectives of the European Union is “to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union”<sup>17</sup>.

The preamble to the Treaty of Amsterdam of October 2, 1997 also refers to human rights, fundamental freedoms, and the rule of law. It affirms the “attachment to fundamental social rights as defined in the European Social Charter signed in Turin on October 18, 1961, and the 1989 Community Charter of the Fundamental Social Rights of Workers”<sup>18</sup>.

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<sup>14</sup> Ibidem.

<sup>15</sup> Ibidem, pp. 320–321.

<sup>16</sup> Ibidem, pp. 322 and 329.

<sup>17</sup> Ibidem, p. 319.

<sup>18</sup> *Dokumenty europejskie, vol. III*, prepared by A. Przyborowska-Klimczak, E. Skrzydło-Tefelska, Lublin 1999, p. 45.

The Treaty of Amsterdam further emphasized the protection of fundamental rights by amending the text of Art. F(1) (now Art. 6 (1) TEU). As amended, this article states that: “The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, which are common values to the Member States<sup>19</sup>.”

In Art. 7 (1) and (2), the Treaty of Amsterdam provides for the possibility of suspending the rights of a Member State, which ‘seriously and persistently’ infringes the principles set out in that Article. The Article provides that: “1. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one-third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Art. 6 (1), after inviting the government of the Member State in question to submit its observations. 2. Where such a determination has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council”<sup>20</sup>.

It is worth noting that the procedure under Art. 7 TEU does not involve the Court of Justice. CJ is also not competent to assess whether the Council and the European Parliament have correctly determined that the principles set out in Art. 6 (1) TEU had been infringed. It is because Art. 7 TEU is one of the “Common Provisions” of the Treaty, for which Art. 46 TEU does not provide for the jurisdiction of the Court of Justice. Hence the mechanism provided for in Art. 7 TEU (...) is a strictly political control mechanism<sup>21</sup>.

Furthermore, the Treaty of Amsterdam constitutionalized the so-called Copenhagen criteria<sup>22</sup>, formulated at the European Council in 1993 by intro-

<sup>19</sup> Ibidem, p. 53.

<sup>20</sup> Ibidem, p. 55.

<sup>21</sup> A. Płachta, *Zasada ochrony...*, p. 351.

<sup>22</sup> The Outcome Document of the European Council held in Copenhagen on June 21 and 22, 1993 formulated the following five political and economic criteria that the associated country has to meet prior to its accession to the European Union: 1) Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. 2) Introduction of market economy. 3) Capacity to cope with competitive pressure

ducing to Art. 49 TEU the requirement for countries applying for EU membership to respect the principles on which The European Union has been founded<sup>23</sup>. Respect for human rights has thus become a legal condition for EU membership.

The amendments also concern the prohibition of discrimination. Additionally, in listing the tasks of the Community, Art. 2 TEC related to promoting “equality between men and women”. Accordingly, new paragraph 2 of Art. 3 refers to eliminating inequalities as a new objective in all Community actions specified in the said Article<sup>24</sup>. Additionally, a new paragraph has been added to Art. 6, and a new Art. 6a has been inserted, defining the prohibition of discrimination, albeit not by adding new rights, but by giving the Council new powers<sup>25</sup>.

The new Art. 213 b, annexed to ECT, which deals with protecting personal data and its free movement starting on January 1, 1999, should be viewed as a fundamental right<sup>26</sup>. There are also three minor amendments concerning the citizenship provisions of ECT: 1) Art. 8 has been amended by adding a new sentence: “Citizenship of the Union shall complement and not replace national citizenship”; 2) A new paragraph has been added to Art. 8d stipulating that: Every citizen of the Union may write to any institution or body in one of 12 official languages and have an answer in the same language; 3) A new sub-paragraph has been inserted in the preamble: the “Member States are determined to promote the development of the highest possible level of knowledge for their peoples through a wide access to education and through its continuous updating”<sup>27</sup>.

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and market forces within the European Union. 4) Capacity to assume the rights and obligations of Union membership, including adaptation to the requirements of political, economic and monetary union. 5) Accession of the candidate country without the European Union forfeiting the achieved level of integration. See: E. Dynia, *Integracja europejska*, Warsaw 2002, pp. 197 and 199.

<sup>23</sup> Cf. *Dokumenty europejskie*, vol. III..., p. 91.

<sup>24</sup> *Ibidem*, pp. 103 and 105.

<sup>25</sup> *Ibidem*, p. 111.

<sup>26</sup> *Ibidem*, p. 319.

<sup>27</sup> A. Wyrozumka, *Traktat Amsterdamski a problem implementacji prawa europejskiego*, [in:] *Implementacja prawa integracji europejskiej w krajowych porządkach prawnych*, ed. C. Mik, Toruń 1998, p. 68.

Under the provisions outlined in Art. 46 of the Treaty on European Union (TEU), fundamental rights are under judicial protection<sup>28</sup>, meaning that the ECJ is competent to rule in cases involving fundamental rights. Additionally, individuals may bring actions before the Court of Justice if Community bodies have violated their rights<sup>29</sup>.

The extension of the jurisdiction of the Court of Justice to the protection of citizens' rights is a consequence of the assumption made within the Union that judicial protection is the basis and most important guarantee of the execution of these rights<sup>30</sup>.

Specific, particular measures for protecting fundamental rights have been set out in individual (numerous) acts of secondary legislation governing social rights, employment, cohesion policy, consumer protection, and environmental protection in the Communities. The Commission always ensures that they are complied with and, in most cases, also decides on their application<sup>31</sup>.

It has happened on more than one occasion that acts of secondary legislation, especially directives, have extended the protection of fundamental rights beyond that provided by the Treaties. For example, the principle of equal pay for equal work for men and women, provided for in Art. 141 of the Treaty of Rome, has been progressively extended to other aspects related to labor relations: such as employment opportunities (access to jobs), vocational training, working conditions and social security<sup>32</sup>. Further changes in human rights were introduced by the Treaty of Nice, signed on February 26, 2001<sup>33</sup>.

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<sup>28</sup> Under this Article the jurisdiction of the ECJ has been extended in relation to Art. 6 (2) TEU insofar as it concerns the action of Community bodies in areas where the Court is mandated to act under the Treaties establishing the European Communities and the Treaty of Amsterdam. *Ibidem*, p. 89.

<sup>29</sup> K. Bagan-Kurluta, K. Cuadrat-Grzybowska, *Ochrona praw człowieka*, [in:] *Integracja europejska. Wprowadzenie*, ed. M. Perkowski, Warsaw 2002, p. 344.

<sup>30</sup> *Karta Praw Podstawowych Unii Europejskiej. Tekst Karty. Stanowisko Rady Doradczej do spraw Praw Człowieka przy Ministrze Spraw Zagranicznych*, Warsaw 2001, p. 55.

<sup>31</sup> J. Sozański, *Prawa podmiotowe w systemie Wspólnot i Unii Europejskiej*, "Prawo Unii Europejskiej" 2003, p. 28.

<sup>32</sup> P. Filipek, *art. 6...*, pp. 121–122.

<sup>33</sup> The Treaty entered into force on 1.02.2003. *Text of the Treaty, Protocols to the Treaty, Declarations annexed to the Final Act of the Intergovernmental Conference*, [in:] *Traktat z Nicei z komentarzem*, eds. S. Hambura, M. Muszyński, Bielsko-Biała 2001.



In response to a situation in Austria, one of the most important changes was introduced to the Treaty of Nice – the amendment of Art. 7 TEU. Its purpose was to make EU action more efficient and flexible if the principles of “liberty, democracy, respect for human rights and fundamental freedoms and the rule of law” are under threat in one of the Member States (Art. 6 (1) TEU)<sup>34</sup>.

The amendment to Art. 7 TEU introduces and regulates ‘early warning’, i.e., a procedure before deciding whether a Member State is in a severe and persistent breach of principles set out in Art. 6 (1) TEU. Applying this procedure, it should be established if there is an obvious risk of a severe infringement and whether an appropriate recommendation must be made to that Member State. Additionally, it should be determined whether that Member State is to be subject to the control of the Court of Justice<sup>35</sup>.

The Treaty of Nice also modifies Art. 144 of TEC<sup>36</sup>, conferring legal authority on the Social Protection Committee, established by the European Council on June 29, 2000.

The Social Protection Committee has been tasked with monitoring the development of social protection policies in the Member States and the Community, promoting an exchange of information, experience, and good practice between the Member States and the Commission, drawing up reports, adopting opinions, or undertaking other actions within its competence<sup>37</sup>.

One of the major achievements of the Nice Summit was also the proclamation of the Charter of Fundamental Rights (CFR) of the European Union by the European Parliament, the Council of the European Union, and the European Commission on December 7, 2000<sup>38</sup>. However, the Charter is a non-le-

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<sup>34</sup> *Dokumenty europejskie, vol. IV*, prepared by A. Przyborowska-Klimczak, E. Skrzydło-Tefelska, Lublin 2003, p. 20.

<sup>35</sup> S. Hambura, M. Muszyński, op.cit., p. 21. See also art. 7 as amended by the Treaty of Nice, pp. 28–29.

<sup>36</sup> S. Hambura, M. Muszyński, *Od góry masła do Karty Praw Podstawowych*, “Rzeczpospolita” August 25, 2003, p. 21. See also art. 7 as formulated by the Treaty of Nice, pp. 48–49.

<sup>37</sup> I. Malinowska, *Prawa człowieka w Unii Europejskiej*, Warsaw 2005, p. 64.

<sup>38</sup> The initiative to prepare the Charter was taken during the German Presidency of the European Council. The decision on its development was taken by the European Council at the Cologne Summit on June 3 and 4, 1999. At the Tampere Summit, on October 15–16, 1999, a Team of representatives, a high-level body responsible for the preparation of the Charter,

gally binding document; it is merely a political declaration. The Charter of Fundamental Rights can undoubtedly be seen as the consequence of a trend in the Communities to attach increasing importance to the protection of individual rights, protection of which the Court of Justice has developed, supported, and strengthened through its case-law<sup>39</sup>.

It is worth noting that human rights are hardly mentioned in the consolidated version of the Treaty establishing the European Community, as amended by the Treaties of Maastricht, Amsterdam, and Nice. Hence the Community is a purely functional organization, and the individual rights guaranteed by the Treaties are subordinate to its objectives. Accordingly, the Treaty reflects tasks the Community has been assigned: promotion of a high level of employment and social protection, equality between women and men (Art. 2), the prohibition of discrimination on the grounds of nationality (Art. 12), the combating of all discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Art. 13). Human rights are only referred to in Art. 177 on development cooperation: “Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms”<sup>40</sup>.

M.A. Nowicki pointed out that: an “autonomous system for the protection of fundamental rights, based on the case-law of the Court of Justice, has been developed in the Communities (...); however, the absence of explicit provisions for the protection of individual rights in the legal order of

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was set up. The first organizational meeting of the Team took place in Brussels, on December 17, 1999, the second on February 1 and 2, 2000 also in Brussels. It was decided that the Team would be called the Convention. For more information on how the Charter of Fundamental Rights came about see: C. Mik, *Karta Praw Unii Europejskiej. Zagadnienia podstawowe*, [in:] *Traktat Nicejski*, ed. A. Podraza, Lublin 2001, pp. 52–60. Proclamation of the Charter and the Charter itself in: Official Journal of the European Commission C 364/1 of December 18, 2000. *Charter of Fundamental Rights in Polish language*, [in:] *Karta Praw Podstawowych*, ed. M.A. Nowicki, Zakamycze 2003.

<sup>39</sup> K. Witkowska, *Rozwój praw podstawowych i konstytucjonalizmu w Unii Europejskiej*, “Prawa Człowieka. Humanistyczne Zeszyty Naukowe” 2003, No. 9, p. 160.

<sup>40</sup> *Dokumenty europejskie, vol. V*, prepared by A. Przyborowska-Klimczak, E. Skrzydło-Tefelska, Lublin 2004, p. 257; G. Michałowska, *Ochrona praw człowieka w Radzie Europy i w Unii Europejskiej*, Warsaw 2007, p. 179.

the Communities has been a matter of concern”<sup>41</sup>. F. Jasiński believes that “duly defined regulations were missing because EU legislators and ECJ judges approach the delimitation of competences of the EC and the Member States in a relatively restrictive way, in other words, one could only act within the scope allowed by the Treaties<sup>42</sup>. According to C. Mik, the Treaties have failed to overcome a fundamental deficiency in protecting individual rights. None of them includes an unambiguous catalog of rights, clear rules on protection, or a system of safeguards ensuring their observance. Hence there is room for a new type of document, the Charter of Fundamental Rights of the European Union<sup>43</sup>.

The subsequent Revision Treaty introduced many changes to the way the European Union operates<sup>44</sup>. The Treaty of Lisbon, signed on December 13, 2007<sup>45</sup>, introduced modifications to the Treaty on European Union (TEU) and the Treaty on European Community. The latter has also been renamed as the Treaty on the Functioning of the European Union (TFEU). With the entry into force of the Treaty on December 1, 2009, the European Union became an international organization, the legal successor of the European Communities.

It is worth noting that the preamble to the TEU reaffirms the Union’s commitment to the universal values of “the inviolable and inalienable

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<sup>41</sup> M.A. Nowicki, *Wokół Konwencji Europejskiej*, Kraków 2000, p. 420.

<sup>42</sup> F. Jasiński, *Systemowe ograniczenie ochrony praw człowieka w Unii Europejskiej na przykładzie dyskusji nad powołaniem Agencji Praw Podstawowych*, [in:] *Prawo międzynarodowe – problemy wyzwania. Księga pamiątkowa Profesor Renaty Sennenfeld-Tomporek*, ed. J. Menkes, Warsaw 2006, p. 285.

<sup>43</sup> C. Mik, *Karta Praw Podstawowych Unii Europejskiej. Zagadnienia podstawowe*, [in:] *Traktat Nicejski*, ed. A. Podraza, Lublin 2001, p. 52.

<sup>44</sup> The new Treaty included the unification of the institutional structure of the Union, the unification of the sources of derived law, the decision-making mechanism in the Union, the clarification of the principles of division of competences between the EU and its Member States, the reform of individual institutions, including the introduction of a new formula for decision-making in the EU Council by qualified majority; J. Barcz, *Ewolucja charakteru prawnego Unii Europejskiej. Klasyfikacja teoretycznego procesu integracji europejskiej*, [in:] *Institucje i prawo Unii Europejskiej*, eds. J. Barcz, M. Górka, A. Wyzomska, Warsaw 2020, p. 26.

<sup>45</sup> Treaty of Lisbon amending the *Treaty on European Union and the Treaty establishing the European Community*, *EU Journal of Laws C 306/1 of 12.12.2007, Polish version*, [in:] *Podstawy prawne Unii Europejskiej, 3<sup>rd</sup> edition*, ed. J. Barcz, Warsaw 2010, pp. 56–261 (hereinafter referred to as *Podstawy prawne*).

rights of the human person, freedom, democracy, equality and the rule of law<sup>46</sup>. Furthermore, Art. 2 TEU reiterates that the core values of the European Union are “ respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”<sup>47</sup>. Additionally, the TEU, like the mentioned acts of primary legislation, requires that countries applying for EU membership must respect the principles on which the Union is founded<sup>48</sup>. It also needs to be stressed that the Treaty provides for a procedure for the suspension of certain powers of a Member State if that Member State is in a severe and persistent breach of the values on which the European Union is founded<sup>49</sup>.

However, there is no doubt that the EU’s current scope of human rights protection is set out in Art. 6 TEU. Analyzing the Article, we can conclude that the protection of fundamental rights is based, firstly, on the Charter of Fundamental Rights of the European Union<sup>50</sup>, secondly, on the fact that the Union may accede to the European Convention on Human Rights and Fundamental Freedoms and, thirdly, on fundamental rights forming part of Union law as general principles (which, in this case, follows the existing practice set out in earlier primary legislation)<sup>51</sup>.

The Treaty of Lisbon has made CFR legally binding, as follows from Art. 6 (1) TEU, the Charter “shall have the same legal value as the Treaties”. Hence it is now part of primary law, and its scope of application “shall not extend in any way the competences of the Union as defined in the Treaties”<sup>52</sup>. Fundamental rights set out in the Charter must be interpreted under Chapter VII of the Charter. At the same time, the interpretation of the provisions of the Charter should be in line with the provisions of ECHR.

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<sup>46</sup> *Podstawy prawne...*, p. 57.

<sup>47</sup> Art. 2 TEU, *Podstawy prawne...*, p. 59.

<sup>48</sup> Art. 49 TEU, *Podstawy prawne...*, pp. 88–89.

<sup>49</sup> Art. 7 TEU, *Podstawy prawne...*, p. 62.

<sup>50</sup> Art. 6 (1) TEU stipulates, inter alia that “the Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of December 7, 2000, as adapted at Strasbourg, on December 12, 2007, which shall have the same legal value as the Treaties”. *Podstawy prawne...*, p. 61.

<sup>51</sup> Art. 6 TEU.

<sup>52</sup> Art. 6 (1) TEU, second sentence.

Articles 51–54 of CFR stipulate general provisions on the interpretation and application of the Charter. They concern its scope, the extent and interpretation of rights and principles, the level of protection, and the prohibition of abusing rights. According to these provisions, the Charter shall be applied by the institutions, bodies, offices, and agencies of the European Union, and they also apply to the Member States<sup>53</sup>.

These issues are very important as the Charter contributed to a more consistent and comprehensive interpretation of fundamental rights across the EU based on its binding. The institutions of the European Union, the Member States, and the various actors involved in the enforcement of the Charter are obliged to ensure that the Charter becomes a living instrument safeguarding fundamental rights in Europe<sup>54</sup>.

Under the Lisbon Treaty, Art. 6 (2) TEU also provides that “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”. At the same time, Protocol No. 8 attached to the said primary legislation provides in Art. 1 that “the agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (...) shall make provision for preserving the specific characteristics of the Union and Union law”<sup>55</sup>. Similarly, Declaration No. 2 reiterates that the “Union’s accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law”<sup>56</sup>. In the future, the EU’s legal system will be subject to the external control provided for in ECHR.

The reform introduced by the Treaty of Lisbon marks an important stage in developing the protection of fundamental rights in the European Union, particularly concerning the application of the Charter of Fundamental Rights.

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<sup>53</sup> Art. 51–54 CFR; *Podstawy prawne...*, pp. 464–466.

<sup>54</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Strategy to strengthen the application of the Charter of Fundamental Rights in the EU*, Brussels, December 2, 2020, COM(2020) 711 final.

<sup>55</sup> See Protocol (No. 8) relating to Art. 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.

<sup>56</sup> *Podstawy prawne UE...*, p. 393; Art. 52 (3) of the Charter of Fundamental Rights.

On the one hand, EU citizens can now directly invoke the Charter (where it establishes laws having a direct effect) to enforce their rights based on EU law before EU courts (and thus national courts). On the other hand, it is also possible to apply the Charter indirectly, i.e., to use it to interpret national law within the scope of EU law (Union competence). In case of a conflict with a national standard, the law under the Charter shall prevail over national law falling within the competence of the EU<sup>57</sup>.

It should, however, be recognized that complete coherence of the rights in question is provided only when the obligations arising from Art. 6 (2) TEU are met. It will strengthen the protection of the rights of individuals and improve the effectiveness of the regulations in question.

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<sup>57</sup> A. Wyrozumka, *Karta Praw Podstawowych – polskie obiekcje*, “Sprawy Międzynarodowe” 2007, No. 4, pp. 62–63.

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