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THE DEVELOPMENT OF COMMON CONSTITUTIONAL TRADITIONS BY THE EUROPEAN COURT OF JUSTICE AND THE UNION`S ACQUIS

This article is devoted to the investigation of the legal nature of the constitutional traditions common to the Member States and general principles common to the laws of the Member States as an integral part of the acquis of the European Union. The author highlights that both of these legal constructions are enshrined in the founding treaties and are used by the European Court of Justice for the development of the catalog of human rights. The research stipulates that the ECJ's active position transposes the constitutional traditions common to the Member States and general principles common to the laws of the Member States, on the EU level. Also, the principles (those deduced by the ECJ practice from the constitutional traditions common to the Member States and general principles common to the laws of the Member States) contributed to the democratization of the European Union and its transformation into a guardian of the protection of human rights. The article states that the ECJ jurisdiction in the area of human rights allows individuals to obtain an effective mechanism for the protection of their rights. The human rights based on the constitutional traditions common to the Member States and general principles common to the laws of the Member States constitute the constitutional acquis of the European Union as a type of the Union's acquis.

Keywords: Acquis of EU, Constitutional Traditions, European Court of Justice, European Union, General Principles, Human Rights.

Introduction

Respect for and protection of human rights is one of the leading activities of the European Union in accordance with the aim and principles of the organization, enshrined in the founding treaties. Any European State that respects the values of freedom, democracy, respect for human rights and fundamental freedoms and the rule of law may apply to become a member of the EU, as provided for by Articles 6 and 49 of the Treaty on the European Union (TEU)[1].

The criteria to be met by the candidate countries for accession to the European Union (the Copenhagen criteria) were approved by the European Council in Copenhagen in June 1993. According to these criteria, membership in the EU, from the perspective of political standards, requires that the candidate country secures the stability of institutions, thus guaranteeing democracy, the rule of law, respect for human rights and protection for minorities.

Countries wishing to become members of the EU should not only consolidate democracy and the rule of law into their constitutions, but also implement those principals in everyday life. Their constitutions must guarantee democratic freedoms, including political pluralism, freedom of speech and freedom of conscience. They should establish democratic institutions and independent judiciary, bodies of constitutional jurisdiction. This will in turn create conditions for the normal functioning of state institutions, free and fair elections, the periodic change of the ruling parliamentary majority, as well as recognition of the important role of the opposition in political life.

As studies of the development of European constitutionalism have emerged, parallel studies have been conducted of the development of the human rights protection mechanism in the European Union. For example, R. Arnold has pointed out that "The fact that the attempt to establish a Constitution for Europe has

[1] EUR-Lex (2007). *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community* <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM: EN:HTML> (2020, April, 10).

failed does not hinder to qualify the EU order as a supranational order which is in its basic structures, constitutional. The EU Treaty itself, the EU Fundamental Rights Charter and the core parts of the Treaty on Functioning of the EU are in their quality "fundamental", constitutive" of its own legal order, i.e. "constitutional"[1]. In the EU the constituent treaties have endowed the Court of Justice (ECJ) the functions of international, constitutional, administrative courts and the courts of general jurisdiction. In the area of constitutional jurisdiction, the ECJ is empowered to interpret the EU law, it also carries out a function of constitutional control when deciding on the legality of the Union's legislative acts, exercises the function of protecting human rights and freedoms in the EU. Due to its own decisions the EU Court of Justice has accumulated considerable judicial practice in the field of fundamental rights[2].

1. The role of the ECJ in the protection of human rights in the European Union

The European Union law uses some legal constructions the other legal systems are not familiar with. In the Treaty on European Union (TEU) and the Treaty on Functioning of the European Union (TFEU) "the constitutional traditions common to the Member States" (CTC) (Article 6 TEU), "the general principles common to the laws of the Member States" (GPL) (Article 340 TFEU) belong to such legal constructions. By construing those provisions of the founding treaties, the Court of Justice of the EU (ECJ) exercised "progressive development" of the European Union EU law. It concerns first of all the area of human rights.

From the outset of functioning of the European communities there was no integrated mechanism to protect human rights. National constitutional human rights protection systems which operated in every EU Member State formed the bases for the human rights protection system of the Union. Additionally, the protection of human rights has become an integral part of the activities of the Council of Europe. All EU Member States are members of the Council of Europe. Evolvement of the legal framework at the EU level to ensure the protection of rights and freedoms was previously gradual, but the system has great potential for development.

In the early stages of its evolution the EU did not pay primary attention to human rights. It was believed that such issues were outside the goals of economic integration and that the list of human rights should thus not be included in the founding treaties of the European Community.

On the other hand, the competence of institutions of the European Community in the field of human rights was limited. The European Court of Justice did not have criminal jurisdiction, narrowing its ability to engage in the protection of human rights and freedoms. While hearing cases, the ECJ had to deal with political and social rights only occasionally. Therefore, the ECJ did not consider the issue of human rights systematically.

However, it was for the Court of Justice to begin to confer the Community competence in the sphere of human rights. By construing "the constitutional traditions common to the Member States" (CTC) the ECJ contributed to the formation of the EU catalog of human rights. The expression "the constitutional traditions common to the Member States" (CTC) appeared in the ECJ decision in the Case 11/70 Internationale Handelsgesellschaft (1970)[3]. The case dealt with the introduction of licenses for the export of agricultural products within the common agricultural policy, the Court of Justice held that fundamental human rights are part of the constitutional principles common to the Member States of the European Community. The Court of Justice was therefore supposed to protect basic human rights by applying the relevant provisions of the constitution and international agreements on human rights to which both the Member States were party.

In this case, the Court of Justice decided that it should protect fundamental rights, taking into account the basic principles of the Community. Protection of these rights, in accordance with the common constitutional traditions of the Member States, should be provided within the structure and goals of the European Communities. The Court of Justice further stated that the source of the validity of the concept of human rights was the legal framework of the European Communities. In such instances, the Court of Justice should apply national constitutions and international treaties of the Member States relating to the protection of human rights, not as the source of European Community law, but taking into account interests of Communities.

[1] Arnold, R. (2018). Anthropocentric Constitutionalism in the European Union: Some Reflections. *The European Union – What Is Next? Monograph.* Chech Republic: Wolters Kluwer, 112-113.

[2] Muraviov, V., Mushak, N. (2018). Constitutional jurisdiction of the EU Court of Justice in: Development of Constitutional Law through Constitutional Justice. *Landmark Decisions and their Impact on Constitutional Culture.* Gdansk, 124.

[3] EUR-Lex (1970). *Judgment of the Court. Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermitte* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61970CJ0011> (2020, April, 10).

The CCT has subsequently been confirmed by the case law of the Court concerning the safeguard of human rights.

In his judgment in the Case 4/73 J. Nold (1974) the ECJ stated that fundamental rights form an integral part of the general principles of law, the observance which the Court of Justice ensures, in accordance with constitutional traditions common to the Member States and with international treaties on which the Member States have collaborated or of which they are signatories[1].

In its further practice the ECJ, in particular, has placed on the Union level a number of fundamental rights, including the right of property, right to pursue a trade or profession, right to respect for his private and family life, his home and his correspondence, prohibition of discrimination.

In the Case 44/79 Hauer (1979), the ECJ held that "the right to property is guaranteed in the Community legal order in accordance with the ideas common to the Constitutions of the Member States, which are also reflected in the First Protocol to the European Convention for the Protection of Human Rights, taking into account the constitutional precepts common to the Member States, consistent legislative practices and Article 1 of the First Protocol to the European Convention for the Protection of Human Rights, the fact that an act of an institution of the Community imposes restrictions on the new planting of vines cannot be challenged in principle as being incompatible with due observance of the right to property. However, it is necessary that those restrictions should in fact correspond to the objectives of general interest pursued by the Community and that, with regard to the aim pursued, they should not constitute a disproportionate and intolerable interference with the rights of the owner, such as to impinge upon the very substance of the right to property"[2]. Also in this case the ECJ also stated that "in the same way as the right to property, the right of freedom to pursue trade or professional activities, far from constituting an unfettered prerogative, must be viewed in the light of the social function of the activities protected thereunder. In particular, this being a case of the prohibition, by an act of an institution of the Communities, on the new planting of wines, it is appropriate to note that such a measure in no way affects access to the occupation of wine-growing or the free pursuit of that occupation on land previously devoted to wine-growing. Since this case concerns new planting, any restriction on the free pursuit of the occupation of wine-growing is an adjunct to the restrictions placed upon the exercise of the right to property"[3].

In the other Case 234/85 Keller (1986) the ECJ stated that "the freedom to pursue one`s trade or profession is protected within the Community legal order only subject to the limits justified by the general objectives pursued by the Community, on condition that the substance of the right is left untouched. Whereas the Community rules on the labelling of wines place certain restrictions within a clearly defined sphere on the business activity of the traders concerned, they in no way impinge on the actual substance of the freedom to pursue that activity"[4].

In the Case 136/79 National Panasonic (1980) the ECJ held that "the applicant relies in particular on the article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 whereby "everyone has the right to respect for his private and family life, his home and his correspondence". It considers that those guarantees must be provided mutatis mutandis also to legal persons. In this respect it is necessary to point out that Article 8 (2) of the European Convention, in so far as it applies to legal persons, whilst stating the principle that public authorities should not interfere with the exercise of the rights referred to in Article 8(1), acknowledges that such interference is permissible to the extent to which it "it in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others"[5].

By dwelling on issues of sex discrimination the ECJ stressed that "the stuff regulations cannot however treat officials differently according to whether they are male or female, since termination of the status

[1] EUR-Lex (1970). *Judgment of the Court of 14 May 1974. J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61973CJ0004 (2020, April, 10).

[2] EUR-Lex (1979). *Judgment of the Court of 13 December 1979. Liselotte Hauer v Land Rheinland-Pfalz. Case 44/79.* <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:61979CJ0044> (2020, April, 10).

[3] Ibid.

[4] EUR-Lex (1986). *Judgment of the Court (Third Chamber) of 8 October 1986. Staatsanwaltschaft Freiburg v Franz Keller. Case 234/85* <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:61985CJ0234> (2020, April, 10).

[5] EUR-Lex (1980). Judgment of the Court of 26 June 1980. National Panasonic (UK) Limited v Commission of the European Communities. Case 136/79 <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=136/79&td=ALL> (2020, April, 10).

of expatriate must be dependent for both male and female officials on uniform criteria, irrespective of sex. The rule that there should be no discrimination is a general principle of the Community legal order. It is a principle contained in the list of fundamental human rights recognized within the Member States and within the context of the European Convention on Human Rights and Fundamental Freedoms; consequently, it forms part of Community law and must be protected by the Court of Justice. First the respect for fundamental rights is a limitation on all Community acts which means that any measure whereby the powers of the Community institutions are exercised is subject to that limitation and in that sense the entire structure of the Community is under an obligation to observe that limitation. Secondly where directly applicable Community measures exist (by the effect of the Treaties of secondary legislation) they must be interpreted in a manner which accords with the principle that human rights must be respected. I do not think that it is possible to say more than that. In particular, legal relationships which are left within the powers of the national legislature must be understood to be subject to the constitutional principle that human rights must be respected which applies in the State to which the relationship is subject, in so far as the internal provisions are not replaced by directly applicable Community provisions[1].

One more group of human rights was deduced by the ECJ practice from general principles of law common to legal systems Member States. These include: non-retroactivity of penal provisions, the right of a person whose interests are perceptibly affected by a decision taken by a public authority must be given the opportunity to make his point of view known; a general requirement of natural justice that any previous punitive decision must be taken into account in determining any sanction which is to be imposed; the right of a person for legal assistance, which includes: the opportunity to be represented by a lawyer when it comes to the protection of his legal rights; the right of the advocate to access to all necessary documents; providing the person with opportunities for confidential communication with a lawyer; the right of a person not to testify against himself; the rights of defense.

In the Case 63/83 Kent Kirk (1984) the ECJ underlined that "the principle that penal provisions may not have retroactive effect is one which is common to all the legal orders of the Member States and is enshrined in Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as a fundamental right; it takes its place among the general principles of law whose observance is ensured by the Court of Justice"[2].

In the Case 17/74 Transocean Marine Paint Association (1974) the ECJ held that "it is clear, however, both from the nature and objective of the procedure for hearing, and from Articles 5, 6 and 7 of Regulation NO 99/63, that this Regulation, notwithstanding the case specifically dealt with Articles 2 and 4, applies the general rule that a person whose interests are perceptively affected by a decision taken by a public authority must be given the opportunity to make his point of view known. This rule requires that an undertaking be clearly informed, in good time, of the essence of conditions to which the Commission intends to subject an exemption and it must have the opportunity to submit its observations to the Commission. This is especially so in the case of conditions which, as in this case, impose considerable obligations having far-reaching effects"[3].

In the Case 14/68 Wilhelm (1969) the ECJ point out that "a general requirement of natural justice, such as that expressed at the end of the second paragraph of Article 90 of the ECSC Treaty, demands that any previous punitive decision must be taken into account in determining any sanction which is to be imposed. In any case, so long as no Regulation has been issued under Article 87(2)(F), no means of avoiding such a possibility is to be found in the general principles of Community law"[4].

In the Case 374/87 Orkam (1989) the ECG underlined that In the absence of any right to remain silent expressly embodied in Regulation No 17, it is appropriate to consider whether and to what extent the general principles of Community law, of which fundamental rights form an integral part and in the light of which all Community legislation must be interpreted, require recognition of the right not to supply information capable of being used in order to establish, against the person supplying it, the existence of an infringement of the

[1] EUR-Lex (1976). *Judgment of the Court of 8 April 1976. Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena. Case,* 43-75 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61975CJ0043> (2020, April, 10).

[2] EUR-Lex (1984). J*udgment of the Court of 10 July 1984. Regina v Kent Kirk. Case 63/83* <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:61983CJ0063> (2020, April, 10).

[3] EUR-Lex (1974). *Judgment of the Court of 23 October 1974. Transocean Marine Paint Association v Commission of the European Communities. Case 17-74* <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:61974CJ0017> (2020, April, 10).

[4] EUR-Lex (1969). *Judgment of the Court of 13 February 1969. Walt Wilhelm and others v Bundeskartellamt. Case 14-68* <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:61968CJ0014> (2020, April, 10).

competition rules. In general, the laws of the Member States grant the right not to give evidence against oneself only to a natural person charged with an offence in criminal proceedings.

A comparative analysis of national law does not therefore indicate the existence of such a principle, common to the laws of the Member States, which may be relied upon by legal persons in relation to infringements in the economic sphere, in particular infringements of competition law. As far as Article 6 of the European Convention is concerned, although it may be relied upon by an undertaking subject to an investigation relating to competition law, it must be observed that neither the wording of that article nor the decisions of the European Court of Human Rights indicate that it upholds the right not to give evidence against oneself. Article 14 of the International Covenant, which upholds, in addition to the presumption of innocence, the right (in paragraph 3(g)) not to give evidence against oneself or to confess guilt, relates only to persons accused of a criminal offence in court proceedings and thus has no bearing on investigations in the field of competition law.

It is necessary, however, to consider whether certain limitations on the Commission's powers of investigation are implied by the need to safeguard the rights of the defence which the Court has held to be a fundamental principle of the Community legal order[1].

In the Case 322/82 Michelin v Commission (1983) the ECJ held that the necessity to have regard to the rights of the defense is a fundamental principle of Community law which the Commission must observe in administrative procedures which may lead to the imposition of penalties under the rules of competition laid down in the Treaty. Its observance requires *inter alia* that the undertaking concerned must have been enabled to express its views effectively on the documents used by the Commission to support its allegation of an infringement"[2].

At the same time the ECJ reaffirmed its competence to protect the rights enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

In the Case 136 /79 National Panasonic (1980), the ECJ held that although the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 was not the part of the EU legal order, its provisions should nevertheless be implemented. Therefore any measures adopted within the EU would not be valid if they were contrary to the provisions of the Convention. So by virtue of the practice of the Court of Justice human rights were attributed to the general principles of European Community law.

Some scholars criticized the ECJ activities in deducing the human rights from the CCT. They accused the ECJ of adopting "rhetoric of tradition" and a common heritage on which to base the "mythical construction of the European spirit". They also consider the ECJ practice as an attempts to seek a real commonality of constitutional traditions, by considering as common those traditions present in the majority of the constitutions of the Member States, or in a certain number of constitutions, or even to consider as "common" a particularly relevant constitutional tradition present, however, in only one Member State. The principle of "inviolable human dignity" is a case in point, only found in the German constitutional tradition[3].

In the Preamble to the Single European Act the Member States expressed their determination to work together to promote democracy on the basis of fundamental rights by stating the following: "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"[4].

In the Maastricht treaty on the European Union these rights were definitely recognized and included in Article F (2) of the TEU the CTC in the following reduction: «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 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community Law»[5].

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[1] EUR-Lex (1989). *Judgment of the Court of 18 October 1989 Orkem v Commission of the European Communities. Case 374/87* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61987CJ0374> (2020, April, 10).

[2] EUR-Lex (1983). *Judgment of the Court of 9 November 1983. NV Nederlandsche Banden Industrie Michelin v Commission of the European Communities. Case 322/81* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61981CJ0322> (2020, April, 10).

[3] Belvisi, F. (2005). The "Common Constitutional Traditions" and the Integration of the EU. *International Institute for the Sociology of Law 2005*, 30.

[4] EUR-Lex (1987). *The Single European Act* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Axy0027> (2020, April, 10).

[5] The official website of the European Union (1992). *The Maastricht treaty* <https://europa.eu/european-union/law/treaties_en> (2020, April, 10).

In the end, this provision was included with small amendments in Article 6.3 of the Lisbon Treaty on the European Union in the following reduction: "Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law".

2. The constitutional acquis of the European Union

The questions arise if the CCT and the GPL may constitute *acquis* of the Union?

In the EU law legal theory and practice there is no definition of the *acquis* which constitutes the bases of the EU legal order and determine the parameters for the harmonization of third countries national legislation with legislation of the European Union.

A special importance of the *acquis* concept consists in guaranteeing homogeneity of the legal system of the European Union, since it is based on the idea that its elements may not be changed in the process of cooperation with other subjects of international law. As a whole, it ensures the integrity of this system and necessarily a uniform application of EU law in all the Member States[1].

Homogeneity of law of European Union is maintained, in particular, in the light of the interpretation given by the ECJ to EU law in several of its rulings. The Court considered the EU law as a new legal order for the sake of which the States have restricted their sovereign powers and which is distinct both from international law and domestic law[2].

The term "*acquis"* is of French origin. Although it has its equivalents in other languages of the Member States and third countries, lots of documents and papers on EU law use this French version[3]. References to the *acquis* may be found in the Lisbon Treaties on the European Union and on functioning of the European Union, documents adopted by EU institutions, international agreements of the Union and the ECJ's rulings.

The ECJ has also made its contribution to developing the notion of *acquis.* In its judgments in cases 80 and 81/77, Commissionnaires Reunis et Ramel[4], the European Court of Justice referred to the *acquis communautaire* as an update of the Community concerning the unification of the market. However, as the practice has shown, the ECJ has failed to play any noticeable role in the development of the EU's *acquis* doctrine.

So, the *acquis* concept mainly associated with internal market legal rules.

References to the *acquis* are also contained in the EU legal acts on matters of foreign relations of the Union. An explicit interpretation for the notion of the *acquis* can be found in the Opinion of the EC Commission of 23 May 1979 concerning the accession of Greece to the European Communities. The EC Commission considered that, in joining the Communities the applicant state accepts without reserve the Treaties and their political objectives, all decisions taken since their entry into force, and the actions that has been agreed in respect of the development and reinforcement of the Communities; it is essential feature of the legal system set up by the Treaties establishing the Communities that certain provisions and certain acts of the Community institutions are directly applicable, that Community law takes precedence over any national provisions conflicting with it, and the that procedures exist for ensuring the uniform interpretation of this law; accession to the Communities entails recognition of the binding force of these rules, observance of which is indispensable to guarantee the effectiveness and unity of Community law; the principles of pluralist democracy and respect for human rights form part of the common heritage of the peoples of the States brought together in the European Communities and are therefore essential elements of membership of the Communities[5].

[1] EUR-Lex (1982). *Document 61981CJ0104* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61981CJ0104> (2020, April, 10).

[2] EUR-Lex (1963). *Judgment of the Court of 5 February 1963. NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration. Case 26/62* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61962CJ0026> (2020, April, 10).

[3] Gialdino, C. (1995). Some Reflection on the Acquis Communautaires. *Common Market Law Review, 3*, 1090-1091.

[4] EUR-Lex (1978). *Judgment of the Court of 20 April 1978. Société Les Commissionnaires Réunis SARL v Receveur des douanes; SARL Les fils de Henri Ramel v Receveur des douanes. Joined cases 80 and 81/77* <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:61977CJ0080> (2020, April, 10).

[5] EUR-Lex (1979). *Commission Opinion of 23 May 1979 on the application for accession to the European Communities by the Hellenic Republic* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A11979H%2FAVI%2FCOM> (2020, April, 10).

The *acquis* in the field of foreign policy and security will include the Maastricht Treaty and its political objectives"[1].

In the EC Commission's Communication of 10 May 2004 "The European Neighborhood Policy, Strategy Paper", the term *acquis* is used in connection with the following two aspects. The first aspect concerns conditions for Libya's entry into the Barcelona process of co-operation between the EU and Mediterranean countries – one of them is Libya's full acceptance of the Barcelona *acquis*[2]. Secondly, the use of this term is associated with the implementation of agreements on partnership and co-operation as well as of association agreements. The document emphasizes that the neighboring countries' "legislative and regulatory approximation will be pursued on the basis of commonly agreed priorities, focusing on the most relevant elements of the *acquis* for stimulation of trade and economic integration, taking into account the economic structure of the partner country, and the current level of harmonization with EU legislation".

Also, the term *"acquis"* has been used in the sphere of international agreements of the Community. In particular, references to the *acquis* are contained in some stabilization agreements concluded between the EC and Balkan countries. Article 72 of the agreement on stabilization and association between the EC and Serbia, concluded in 2001, provides that the Parties recognize the importance of the approximation of the existing legislation in Serbia to that of the Community and of its effective implementation. Serbia shall endeavor to ensure that its existing laws and future legislation will be gradually made compatible with the Community *acquis.* Serbia shall ensure that existing and future legislation will be properly implemented and enforced[3].

The mentioned examples suggest that the term *"acquis"* has various meanings and content in EU law. Consideration should also be given to the fact that, according to all these documents, court decisions and doctrines, the *acquis* includes, in addition to provisions of agreements and acts by EU institutions, also declarations and resolutions adopted within the framework of the Community – that is, even the acts which are not binding. It also includes the ECJ's case law, though rulings by this authority do not belong to the sources of EU law as laid down in the founding Treaties of the European Union. This suggests that the content of the *acquis* is wider than the term "EU law" and may be equated with the EU legal order. On the other hand, it should be noted that it is possible that, when defining the content of the *acquis,* the EU institutions did not reasonably undertake to clearly outline its scope. The matter is in the following. Although it is believed that *acquis* is essentially an established body of rules to be unconditionally recognized both by the Member States and the States expressing their wish to accede to the European Union – for this reason, this body may not be changed during negotiations on accession, – in reality, the content of the *acquis* has continuously been updated. In particular, it is regularly augmented by new rules as, for instance, in the case with the inclusion into the EU's *acquis* the provisions of Schengen agreements.

On the other hand, parts of the *acquis* are regularly excluded from the legal instruments at the expense of those acts which have lost their effect. One should bear in mind that not all the rules making up the body of the *acquis* are relevant for the candidate country. There are also those that do not concern a particular country, although the latter has in some instances to accept that the rules are binding upon it.[4]

In this context, we can distinguish to some extent between the content of the internal and external *acquis.* The first part forms the basis for the legal order of the European Union, whereas the content of the second one depends on the level of relations between the European Union and third countries.

Thus, with the concept of the *acquis* being quite flexible and uncertain, the content of the *acquis* is not something fixed and steady as well – rather, it is permanently being updated. This flexibility is especially noticeable when it comes to the recognition of the *acquis* by third countries. First of all, this concerns the countries whose relations with the European Union are based on the association and partnership agreements, since only some of such agreements envisage the approximation of laws of such countries to EU law. However, the most important point is that the specific content of the *acquis* for the countries intending to conclude association or partnership agreements with the EC may be determined only when the conclusion of such agreements is being negotiated.

[1] *Archive of European Integration (1992).* Europe and the Challenge of Enlargement, 24 June 1992, Bulletin of the European Communities, 3/92 <http://aei.pitt.edu/1573/> (2020, April, 10). .

[2] EUR-Lex (2003). *Communication from the Commission – European Neighbourhood Policy – Strategy paper COM/2004/0373* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0373 (2020, April, 10).

[3] The official website of the European Union (2001). *Agreement on Stabilization and Association between the EC and Serbia* <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/key_document/saa_en.pdf> (2020, April, 10).

[4] European Union (1999). *Foundations of politics, institutions and law*. Kyiv, 40-41.

Moreover, the specific content of the *acquis* changes depending on the Communities' approaches to determining the level of co-operation between the parties. For instance, the EEA Agreement, which does not aim to prepare the Contracting States for EU membership, was to be concluded upon the condition that the associated countries recognize 1,400 acts of the whole body of EC acts making up the *acquis*, whereas the association frameworks for preparing Central and Eastern European countries for EU membership required that only 1,100 acts – most of which governed issues of the internal market – were be approved by the associated countries so as for them to be eligible for accession to European Union[1].

According to the European law doctrine, the *acquis* is commonly understood as a body of legal rules, court decisions, doctrinal notions, recommendations, arrangements, etc., which have been established or adopted by the European Communities in their practice and which should be unconditionally accepted by the States candidates for EU membership – that is, as something which may not be negotiated[2]. An attempt has also been made to define the types of *acquis* (accession *acquis*, institutional *acquis*, *acquis* concerning associations with third countries, *acquis* of the European economic space etc.).

However, there is no mentioning about the constitutional *acquis* as a special part of the Union`s *acquis.* In our opinion, the CCT and GPL and the norms and principals deduced by the ECJ from the CCT and GPL should be considered as constitutional *acquis* that form the integral part of the *acquis* of the Union.

According to many lawyers the constituent agreements of the European Union contain important elements of Constitutions: they legitimize the power of the EU, consolidate the powers of the EU, determine the restrictions for its activity[3].

The constitutional *acquis* supplements the constitutional provisions of the constituent treaties. Together with the European Charter of Human Rights they constitute the essential elements of the EU constitutional provisions.

Conclusions

Over the past 60 years the European Union has come a long way to establish its own human rights protection system: from full deflection of the idea that human rights can take advantage of to the provisions of EU law, to developing its own catalogue of human rights by the interpretation by the ECJ of the constitutional traditions common to the Member States and the general principles common to the laws of the Member States, enshrined in the founding treaties of the EU. The adoption of the Charter of Fundamental Rights contributed to the establishment in the EU of its own human rights protection system. In addition, the entry into force of the Lisbon Treaty introduced a legal basis for the EU's accession to the European Convention on Human Rights. All those rights form the EU constitutional *acquis* as a core of the future European Constitution.

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