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THE LEGAL FRAMEWORK OF HUMAN RIGHTS IN THE EUROPEAN UNION — OVERVIEW

The European Union (EU) is a sui generis organization and, at the same time, an economic and political union between 27 states. It was created for purposes of economic cooperation and at the same time in order to avoid a possible conflict between six member states (Belgium, Germany, France, Italy, Luxembourg, and the Netherlands). Founded as the European Economic Community (EEC), it was established in 1958. The other treaty that establishes after the First treaty were: the Maastricht Treaty, the Amsterdam Treaty, the Nice Treaty, and lastly, the Lisbon Treaty. The internal market was then formed, which continues to aid the member states in developing towards their full potential. Beginning as an economic union, the EU was transformed into an organization spanning many different policy areas with its name changing from the European Economic Community (EEC) to the European Union (EU) in 1993. Due to the abolition of border controls between EU countries, EU citizens hold several rights. At the same time, all EU citizens have the right to freely live, work, study, etc., anywhere in the block without restrictions. Every adult EU citizen has the right to stand as a candidate and to vote in European Parliament elections, whether in their country of residence or country of origin. Equality is about equal rights for all citizens before the law and every EU country must treat EU citizens in the same way as its citizens. The EU single market enables most goods, services, money, and people to move freely. It aims to develop this huge resource in other areas like energy, knowledge, and capital markets to ensure that Europeans can draw the maximum benefit from it.

The EU is governed by the principle of representative democracy, with citizens directly represented at the EU level in the European Parliament and member states

represented in the European Council and the Council of the EU. As foreseen in the Treaty on European Union, the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities. These values are common to the member states in a society in which there is pluralism, non-discrimination, tolerance, justice, solidarity, and gender equality. These values are an integral part of the European way of life and human dignity must be respected, protected, and constitutes the real basis of fundamental rights. Being a EU citizen also means enjoying political rights. The principle of gender equality underpins all EU policies and is at the centre of European integration, it applies to all areas. The EU is based on the rule of law. Every activity carried out by the EU is based on treaties, which are ratified voluntarily and democratically by its member states. Law and justice are upheld by an independent judiciary. In 2012, the EU was awarded the Nobel Peace Prize for advancing the causes of peace, reconciliation, democracy, and human rights in Europe, which are voluntarily and democratically agreed on by its member states. These states have given final jurisdiction in matters of EU law to the Court of Justice of the EU, whose judgments must be respected by all. A short history will describe the development of the legal framework of human rights in the EU law, from unimportant at the beginning of the EU to gaining special significance later on with the EU becoming a beacon that guarantees respect and protection of human rights globally. Today, respect for human rights is at the focus of policies developed by the EU. After the Lisbon Treaty, the protection and respect of human rights enjoy special attention in EU law.

Based on the Treaties of the EU, we list as legal bases which define the respect, guarantee, and protection of human rights within the EU as follows:

The Treaty on European Union (TEU) describes the EU values, “human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”¹ It shows that human rights are one of the most important values of the Union.

TEU describes the EU objectives in the wider context, where the EU contributes to the eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter².

It shows that protection of human rights is one of the missions that the state has to conclude to be part of the EU. The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union which

¹ The Article 2 of the Treaty on European Union (TEU), Official Journal of the European Union, C 202, English edition, Volume 59, 7 June 2016.

² The Article 3 of the TEU.

shall have the same legal value as the Treaties¹. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. Nothing in the Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognized, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions². The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions. 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. The EU institutions, bodies and its member states must also respect the Charter in the EU's external relations, although the Charter of Fundamental Rights of the European Union³, only explicitly refers to the implementation of Union law countries joining the EU must also comply with this Charter.

Similarly, in its external actions the EU⁴ applies the same principles of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and respect for the principles of the United Nations Charter of 1945 and international law. It shows that even in the economic, political, innovation, etc., domains, the EU maintains focus on respecting and protecting human rights. Because of the cruciality of human rights, the EU endorses the principle of the indivisibility of human rights and fundamental freedoms, committing itself to consider economic and social rights to be as important as civil and political rights. In this way, there are no rights that are considered less important than other rights, but all civil, economic, political, and social rights have the same value in the EU.

The Treaty of Rome of 1957, the treaty which established the European Union, had economic and political cooperation at its heart whilst respecting and protecting human rights was a secondary consideration. The Treaty of Rome defines a small

¹ The Article 6 of the TEU.

² Article 53 of The Charter Of Fundamental Rights Of The European Union, Official Journal of the European Union, EN C 326/391, 26.10.2012.

³ The Article 6.1 of the TEU.

⁴ The Article 21 of the TEU. Even Article 205 of the Treaty on the Functioning of the European Union (TFEU): determines that the EU's international actions are to be guided by the principles laid down in Article 21 of the TEU.

category of human rights, namely the right to work and the right to move freely, and the prohibition of gender discrimination. These are provided respectively in Articles 48¹, 118², 119³ and marked the first beginnings of respect for human rights in the context of economic development within the member states of the EU. Fundamental rights have helped establish the common market for the states that ratified the Treaty. In fact, the latter should have been the legal regulation of an economic union, so that the individual was not protected as a human being, but only as the protagonist of the economic world in which states interact, as an individual — worker, individual — entrepreneur, individual — farmer, individual — economic operator. In addition to issues of an economic nature, the protection of fundamental rights in the Community Treaties is also explained in the rules set out in general policy. At the time of the establishment of the EEC, states, in addition to France, were ratifying the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Therefore, it would be difficult to achieve the adoption of the Treaty if the norms regarding fundamental rights and freedoms were established. Among other

¹ Article 48.1: The free movement of workers shall be ensured within the Community not later than at the date of the expiry of the transitional period. 2. This shall involve the abolition of any discrimination based on nationality between workers of the member states, as regards employment, remuneration and other working conditions. 3. It shall include the right, subject to limitations justified by reasons of public order, public safety and public health: 22/72 (a) to accept offers of employment actually made; (b) to move about freely for this purpose within the territory of member states; (c) to stay in any member state in order to carry on an employment in conformity with the legislative and administrative provisions governing the employment of the workers of that State; and (d) to live, on conditions which shall be the subject of implementing regulations to be laid down by the Commission, in the territory of a member state after having been employed there.

² Article 118: Without prejudice to the other provisions of this Treaty and in conformity with its general objectives, it shall be the aim of the Commission to promote close collaboration between member states in the social field, particularly in matters relating to — employment, — labour legislation and working conditions, — occupational and continuation training, — social security, — protection against occupational accidents and diseases, — industrial hygiene, — the law as to trade unions, and collective bargaining between employers and workers. 44/72 For this purpose, the Commission shall act in close contact with member states by means of studies, the issuing of opinions, and the organising of consultations both on problems arising at the national level and on those of concern to international organisations. Before issuing the opinions provided for under this Article, the Commission shall consult the Economic and Social Committee.

³ Article 119. Each member state shall in the course of the first stage ensure and subsequently maintain the application of the principle of equal remuneration for equal work as between men and women workers. For the purposes of this Article, remuneration shall mean the ordinary basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the workers' employment. Equal remuneration without discrimination based on sex means: (a) that remuneration for the same work at piece-rates shall be calculated on the basis of the same unit of measurement; and (b) that remuneration for work at time-rates shall be the same for the same job.

concerns, in some countries there was a fear of the adoption of the Treaty because with the inclusion of a document of fundamental rights, the activity of Community bodies would no longer be restricted and, thus, they would protect not only economic interests but also political ones. The lack of inclusion of this document in the treaty was balanced in some way by the guarantee given by the signatory states for the protection of these rights through their national systems.

The Single European Act created a common internal market that brought some changes in the way of functioning of the institutions of the European Economic Community but did not define other or new rights. Human rights are stated in the preamble to be respected and primarily designed to strengthen a single internal market and foster monetary integration, acknowledging the goal of promoting democracy based on fundamental rights¹. The Court of Justice of the EU recognized human rights as a fundamental aspect of community law based solely on the powers set out in the Treaty of Rome². Concerning human rights, it adjudicated only the conflicts created between the member state and the employee in the member state.

The integration of human rights into the policies undertaken in the EU was initiated by the Maastricht Treaty. The Maastricht Treaty, adopted in 1992, converted the obligation to respect human rights previously articulated by the Court of Justice of the EU (CJEU) into an obligation of the Treaty between the Union and the member states, thanks to their membership in the EU. This made it mandatory for countries that wanted to accede the EU to respect and guarantee fundamental human rights. Although it did not provide a catalogue of human rights, the treaty affirmed the importance of respecting and guaranteeing all human rights. The Maastricht Treaty, the treaty that changed the name of the block from the European Economic Community to the European Union (TEU), provided that: The Union will 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 the result of constitutional traditions common to the member states, as general principles of Community law.

The Amsterdam Treaty, which came into force in 1999, affects both the substantive content of human rights and the mechanisms available to protect human rights in the EU. The human rights policy of the EU is twofold. It affects all community and national actions and legislation that implement community law. It also affects the external relations of the EU by addressing human rights concerns in its dealings with

¹ Single European Act, February 17, 1986, 1987 OJ (L 169) 1, 2, [1987] CMLR 741. Preamble states: "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."

² Article 179.

nations that are not members of the EU. The Amsterdam Treaty explicitly incorporated the human rights standards set out in the European Convention on Human Rights into EU law. Article 6(2) provides that “the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.” Further, the CJEU is required, whenever it has jurisdiction, to apply these human rights standards concerning acts of the EU institutions and to actions of member states implementing EU law. The Treaty of Amsterdam has also expanded the jurisdiction of the CJEU and the potential for overlapping subject matter jurisdiction with the ECHR, the court that has jurisdiction over alleged violations of the European Convention on Human Rights has thus been increased. This presents the potential for possible conflicts between the decisions given by the CJEU and the ECHR on human rights issues. The Amsterdam Treaty was important in articulating and improving the principle of gender equality. It placed a general obligation on the Union in all its activities to eliminate gender inequalities and included the value standard comparable and permissible affirmative action in the workplace. Also, it extended the scope of the principle of equality and allowed the Council to take action against discrimination based on sex, race or ethnic origin, religion or belief, disability, age, or sexual orientation within the limits of its powers. Thus, a wide range of rules governing the action of the ruling member state affecting gender, race, age, religion and belief, sexual orientation, and disability applies. All candidate states are now required to respect human rights, democracy, and the rule of law as a condition of Accession in the EU. Due to this, since 1974, the CJEU has used all the treaties that the member states of the EU have signed or participated in, including international treaties such as the International Covenant on Civil Rights and Politics, as interpretive tools for the content and scope of fundamental rights. International human rights treaties to which the member states have cooperated, or to which they are signatories, supply guidelines to be followed within the framework of Community law.

The Lisbon Treaty has made an important step forward in the protection of fundamental rights within the EU. This treaty set out the obligation for the EU to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The treaty gives the ECHR a binding rather than a declaratory character. EU accession to the ECHR brought the obligation for respect and guarantee of fundamental human rights by EU member states. The catalogue of human rights provided by the ECHR became mandatory to be implemented by the EU, thus extending its jurisdiction to the EU itself and its member states. The Lisbon Treaty provides a strengthening of the guarantee and respect of fundamental human rights as defined in the Treaty¹:

¹ Article 11.

1. The Union recognizes the rights, freedoms, and principles enshrined in the Charter of Fundamental Rights of the European Union of 7 December 2000, adopted on 12 December 2007, in Strasbourg, which has the same legal value as the treaties. The provisions of the Charter do not in any way extend the powers of the European Union set out in the Treaties.

2. The European Union accedes to the European Convention for the Protection of Human Rights and Fundamental Freedoms. This membership shall not alter the competencies of the European Union as defined in the Treaties.

3. “Fundamental rights enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms and those resulting from the common constitutional practices of the member states are part of European Union law as general principles.”

Thus, the Lisbon Treaty made the Charter of Fundamental Rights binding through the modification of Article 6 hence not becoming an integral part of the Treaty. The EU constitutional framework for human rights today contains a large catalogue of legal acts for the respect and guarantee of fundamental human rights.

Referring to Article 6 of the TEU, we list three formal sources:

EU Charter of Fundamental Rights, which was promulgated in 2000 and the Lisbon Treaty in 2009 defined its legally binding status similar to other EU treaties.

The ECHR, which has been treated by the CJEU as a “special source of inspiration” for human rights principles and which will become formally binding on the EU when it accedes to the ECHR.

General principles of EU law”, a structure of legal principles, including human rights, articulated and developed by the CJEU over the years, drafted by the national constitutional traditions ECHR and other international treaties signed by member states.

These three sources overlap, since many provisions of the EU Charter are based on the ECHR, creating a certain amount of legal confusion. Other international human rights sources are rarely included. The CJEU has recently made clear that it evaluates the Charter as the “main basis” on which EU courts ensure that human rights are monitored¹. However, the United Kingdom, Poland, and the Czech Republic negotiated a protocol to the Lisbon Treaty aimed at limiting the impact of the Charter on these states. EU law standards are binding on the EU institutions and structures in all activities and the member states when they operate within the scope of EU law. Questions continue to be raised about the ambiguity and unclear definition of “within the scope of EU law” relative to the member states’ application of such scope.

The EU has gradually integrated human rights issues into a set of policies. Domestic policy, oriented to this type, is the structure of anti-discrimination law,

¹ CJEU Document on various aspects of EU accession to the ECHR, Luxembourg, 5 May 2010.

which has been significantly disseminated recently, along with the development of personal data protection and privacy¹. The EU actively promotes “human rights and democratization” policies in various parts around the world and uses human rights provisions in international trade and development policies. It has established a “conditional” human rights-based policy on candidate countries and claims to integrate human rights through a common foreign and security policy. Various institutional and political developments in the field of human rights have not closed the debate on whether the EU is an important human rights organization². In the areas of migration, asylum, and criminal justice, in particular, the EU has been criticized for neglecting and undermining human rights issues.

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¹ Taken from: <http://eas.europa.eu/human rights / index en.htm>.

² *The EU and Human Rights* by Philip Alston with the assistance of Mara Bustelo and James Heenan (eds.), *Academy of European Law*, European University Institute, Oxford University Press, 1999, ISBN 0-19-829806-4, 946, pg 613.