

# ASPECTS OF THE EVOLUTION OF HUMAN RIGHTS PROTECTION IN THE EUROPEAN UNION

NICOLAE PURDĂ\*

## Abstract

*Human rights protection within the European Community and the European Union has developed judicially, the human rights being protected by the Community Courts as general principles of Community law. The Treaty of Maastricht and the Treaty of Amsterdam have codified the Community law within the area of human rights. The codification of European Union's concept of human rights in a single document was realized by adopting the Charter of Fundamental Rights of the European Union, on 7 December 2000 in Nice, whose provisions acquired legally binding under the Treaty of Lisbon.*

**Keywords:** *European Union, protection of human rights, Court of Justice of the European Union, European Convention on Human Rights, Charter of Fundamental Rights of the European Union.*

## 1. Preliminary views

The absence of legally binding instruments on human rights has been a problem both theoretically and practically, for a long time inside the borders of European Communities and later of the European Union.

Along with the diversification of the Communities' powers, there are questions regarding the relation between the Community law and the fundamental freedoms. To this end, the Court of Justice had a decisive intervention, which since 1969 has developed a jurisprudence which tended to effectively protect certain rights and freedoms. Initially, the Court of Justice refused to exercise the control of legality of Community acts in terms of fundamental rights guaranteed by the constitutions of the Member States on the grounds that "there shall be no responsibility for ensuring compliance with internal rules, even constitutional, effective in one or another of the Member States"(case Storck-1959).

Pursuant to the Court's position, some national Constitutional Courts (German and Italian) have expressed their determination to examine the constitutionality of a treaty and the Community rules derived in terms of human rights guaranteed by national constitutions, thus reversing in this field the report between Community law and national law (governed by the principles of primacy and direct effect).<sup>1</sup>

In the absence of a catalogue of rights enshrined by the Community law, the Court of Justice has undertaken the task of solving by praetorian means the gap problem Community's system of fundamental rights protection.

The Luxembourg Court emphasized that the protection of fundamental rights is a principle of Community law, in cases *Stauder*, November 12, 1969, *Internationale Handelsgesellschaft* of December 17, 1970 and *Nold*, May 14, 1974. The Court also resorted to "adopt" as standard rule on the constitutional traditions common to the Member States and to the "international instruments on protection of fundamental rights on which the Member States have cooperated or acceded"<sup>2</sup>. The International instruments to which the Court appealed in its case were: the International Covenant on Civil and Political Rights, European Social Charter, the European Convention on Human Rights.

---

\* Professor, PhD, "Nicolae Titulescu" University of Bucharest, Faculty of Social and Administrative Sciences (email: purda\_nicolae@yahoo.com).

<sup>1</sup> *Frédéric Sudre, Droit européen et international des droits de l'homme, 6<sup>e</sup> édition refondue*, (Paris: PUF, 2003), p.140.

<sup>2</sup> Decision in the case *Nold*, no 4/73 of 14 May 1974, Rec., p. 491.

The Court's observation concerning the fundamental rights has gradually expanded from acts adopted by Community to those of institutions of the national with incidence in the area of the Community law.<sup>3</sup> Therefore, the Court has accepted that there are limits to the legislative activity of the European Community, arising from the need to respect human rights, which was gradually considered as a condition of the lawfulness of Community acts.

The encompassing of Fundamental Rights by the Court in Luxembourg was based on the constitutional traditions common to the Member States and the international human rights acts. Also the Community law contains specific provisions on free movement and non-discrimination. The Court of Justice, based on essentially economic provisions of the Community law, deduced by a liberal interpretation and an array of social rights.

In order to ensure an effective protection of fundamental rights, the European judge relates primarily to Community's texts. Except for the free movement of persons and non-discrimination, the economic and social rights have only a programmatic nature, they cannot be invoked in court other way than by means of provisions of secondary Community law.<sup>4</sup>

## **2. Principles deriving from community law (constitutive treaties) in the protection of human rights**

The principle of free movement of persons and non-discrimination included in the Treaty establishing the European Community (EC Treaty) are "structural" fundamental principles of the Community.

### **2.1. The principle of free movement of persons**

The freedom of movement is a fundamental principle of community's construction, since its objective is to create a common market so the four freedoms may be guaranteed -freedom of movement of persons, freedom of movement of goods, free movement of capital and freedom of movement of services.<sup>5</sup>

The principle of free movement is differentially applied according to whether they are citizens of the Member States or citizens of other States. The freedom of movement shall entail the right of States to exercise control over the entry of foreigners into their territory.

The freedom of movement was first recognized by the Treaty of workers, but rights related to freedom of movement have been extended to the worker's family members, regardless of their nationality. Article 48, par.3 of the Treaty establishing the European Community provides workers the right to move freely within the Member States, to establish themselves inside the Members States in order to continue to work and even after quitting the job. Also, workers have the right to reunite with their family inside the State they are working.

The free movement of Community nationals has a wide field of application, assuming the freedom of establishment within a State, and to choose a job in one of the Member States.

The Treaty on European Union provides Community members the right to move and to reside in the Member States, which is an attribute of the European citizenship.

For non-Community nationals, the Schengen agreements authorize them to enter and move freely in the Schengen area for a period of 3 months, after which national rules are applied and each Member State is free to regulate the issue of immigration in compliance with international commitments.<sup>6</sup>

---

<sup>3</sup> Decision in the case *Wachauf*, no.5/88 of 13 July 1989, Rec., p. 2609.

<sup>4</sup> Bianca Selejan-Guțan, *Protecția europeană a drepturilor omului*, (Bucharest: C.H.Beck, 2011), p.243.

<sup>5</sup> Raluca Miga-Beșteliu, Catrinel Brumar, *Protecția internațională a drepturilor omului*, (Bucharest: Universul Juridic, 2010), p.79.

<sup>6</sup> *Ibidem*, p.80.

## 2.2. The principle of non-discrimination

The Community law has no unique and general provision to enshrine discrimination in all areas. Therefore, the Court of Justice of European Union has made this principle one of the fundamental principles of Community law. The EC Treaty makes several references to discrimination, but only in two specific areas, citizenship and sex.

### 2.2.1. Restraint of discrimination based on nationality

The Article 6 of the EC Treaty prohibits widespread discrimination based on nationality. This prohibition is then resumed in special cases. A general provision provides greater efficiency to others, strengthening prohibitions and limiting exceptions under special provisions, especially the reserve of “public order” or the special case of employment in public administration. Special provisions are set out in the secondary legislation.<sup>7</sup>

EU law prohibits discrimination based on nationality only to citizens of EU Member States. Therefore, different treatments may arise for foreign citizens.

### 2.2.2. Restraint of discrimination based on sex

The constituent treaties do not contain general provisions on gender equality, but there are many texts that refer to it. For example art.119 of the Treaty establishing the European Community provides that States must ensure the implementation of the principle of equality of payment between men and women for equal work. This provision is directly applicable and has direct effect. Individuals can appeal it afore the national courts.

The area of the principle of equality is extended to professional equality, social security, access to employment, working conditions.<sup>8</sup>

The Court of Justice ruled that professional equality is incompatible with night work prohibition for women since it is allowed for men.

## 3. Concerns of the European Union and communities on human rights

Political institutions of the Communities have clearly expressed their position on human rights. In a Joint Statement of the Council, Parliament and Commission on 5th April 1977 on fundamental rights, the three institutions emphasized the importance it attaches to fundamental human rights and alleged that in exercising their powers and in pursuit of Communities’ goals they observe and will continue to observe these rights.

In 1989, the European Parliament enacted a Declaration of Rights and Fundamental Freedoms, which sets forth a “catalogue” of rights without legal binding, since this document was not mentioned in subsequent treaties. Also, in 1989 was adopted the Community Charter of the Fundamental Social Rights of Workers, programmatic enforceable document in protection socio-economic rights.

The Single European Act of 1986 expresses the Member States’ will to promote democracy based on fundamental rights.

The jurisprudential efforts of the Court of Justice had conventional consecration by art. F parag.2 of the **Treaty on European Union (Treaty of Maastricht** of February 7, 1992, entered into force on November 1, 1993), which states that “The Union shall respect fundamental rights as guaranteed by the European Convention on Human Rights of 1950 and as they result from the constitutional traditions of the Member States, as general principles of Community law”.

The treaty introduced the institution of *European citizenship*, stating some of its specific rights: freedom of movement and residence within the Member States, the right to elect and be elected in local elections and European Parliament elections in their country of residence, the right to petition the European Parliament and the right to refer to the European Ombudsman, the right to

---

<sup>7</sup> Bianca Selejan-Guțan, op.cit., p. 244.

<sup>8</sup> Raluca Miga-Besteliu, Catrinel Brumar, op.cit., p.81.

diplomatic and consular protection by any Member State when the State of nationality is not represented in a third country.<sup>9</sup>

The absence in a Treaty of the enumeration of fundamental human rights inevitably involves an appeal to the Court of Justice.

The **Treaty of Amsterdam** of October 2, 1997, entered into force on May 1, 1999 included important provisions on fundamental rights. Article 6, parag.1 of the Treaty enshrines the three principles which form the “common heritage of values” of Member States: human rights, democracy, the rule of law. These principles were undertaken from the Statute of the Council of Europe and became true constitutional principles of the European Union.<sup>10</sup>

For that matter, Article 49 of the Treaty achieves by the respect of these principles a condition of adherence in the Union. The Treaty enshrines the legal guarantee of respect for human rights by recognizing the jurisdiction of the Court of Justice in enforcing the fundamental rights of the European entities (Article 46, letter d).

The Treaty expressly authorizes the Council to take appropriate action to combat discrimination based on sex, race, ethnicity, religion, opinion, disability, age or sexual orientation, acting unanimously on Commission’s proposal and after consulting the European Parliament.

The Treaty also enables the Council, on a proposal by one third of the Member States or the Commission, to suspend certain rights of a Member State which might be responsible for serious and persistent violations of these rights.

Social provisions of the Treaty provide the groundwork for the Community’s legislative action in order to improve working and living conditions of workers, including equality between men and women in the labour market.<sup>11</sup>

The Treaty of Amsterdam also aims at the recognition of new rights that are part of the process of integration of policies related to free movement of persons within the Community pillar and creating an area of freedom, security and justice.

The new rights introduced by the Treaty are: the right to employment, access to documents and the fight against discrimination. The right to access documents, as opposed to European “administration”, guarantees each and every European citizen or legal persons resident or localized in a Member State, a right to access documents of The European Parliament, Council and Commission, to strengthen the principle of transparency.<sup>12</sup>

The **Treaty of Nice** of 25 February 2000 (which entered into force on 1 February 2003) completed the area of political control over the observance of fundamental rights by Member States, giving them both a preventive function, of alert and repressive, to sanction the given States.

The preventive role is exercised by determining a risk of inobservance of EU principles by a Member State, this role is exercised by the Council gathered in regular formation, with a majority of 4/5, by the reasoned proposal by one third of the Member States of the European Parliament or the Commission and with the assent of Parliament. Basically, the Council shall make recommendations to the State and then monitor the progress.

The Treaty provided the opportunity for the State in question that within one month from the moment of determining serious and persistent infringement of human rights by Council, it may appeal to the European Court of Justice but only on matters of procedure. The Court may assess the legality of sanctions adopted by the Council, but only for substantive reasons.

The idea of “coding” EU human rights concept in a single document to harness both the traditions of the Member States and previous experience of the organization, was achieved by the

---

<sup>9</sup> Ion Diaconu, *Drepturile omului în dreptul internațional contemporan*, (Bucharest: Lumina Lex, 2010), p.293.

<sup>10</sup> Frédéric Sudre, op.cit, p.147.

<sup>11</sup> Ion Diaconu, op.cit., p.294.

<sup>12</sup> Raluca Miga-Besteliu, Catrinel Brumar, op.cit., p.84.

adoption on December 7, 2000, the Conference of Nice, the **Charter of Fundamental Rights of the European Union**, which remained outside the treaty document, therefore it has no legally binding.

In an amended version, the Charter of Fundamental Rights was introduced in Title II of the draft **Treaty on a Constitution for Europe** which was signed in Rome on October 29, 2004 by the Heads of State and Government of Member States of the European Union, but remained only a project because it was rejected by referendum in France and the Netherlands.

**Treaty of Lisbon**, signed on December 13, 2007 and entered into force on December 1, 2009, invests with legally binding the Charter of Fundamental Rights, with some additions to the original (regarding personal data protection, the right to good administration, access to EU documents ) without reduplicating the Charter. Hence, the Treaty extends the jurisdiction of the EU in general and the Court of Justice of the European Union to all provisions of the Charter. In addition, the Treaty reasserts the principle of human rights and fundamental principle of the EU and provides the accession states of the European Union to the European Convention of Human Rights and Fundamental Freedoms.

By these provisions, the Treaty of Lisbon marks the decisive step in putting the entire EU's activity based on fundamental human rights.<sup>13</sup>

The Treaty has brought some changes in the procedures to be followed in cases of human rights violations by a Member State. Thereby, the preventive procedure allows the Council to "establish that there is a evident risk of a serious inobservance by a Member State" of values such as respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of those belonging to minorities. Before acting such a determination, the Council monitors the State in question and may address recommendations, deciding at the same time.

The procedure with punitive purpose takes place within the European Council, which after the observation may decide by qualified majority the suspension of certain rights up against the State in question resulting from application of the Treaties, including the voting rights of the representative of the Government in the Council taking into account the consequences such a suspension of the rights and obligations of natural and legal persons. This way it was established a clear link between EU membership and common values including respect for human rights.

#### **4. Court of Justice of the European Communities and the European Convention for the Protection of Human Rights and Fundamental Freedoms**

The Court of Justice of the European described the Convention on Human Rights as being part of the international instruments capable of providing 'directions' to the Court for determining fundamental rights in the international legal order (Case *Nold* -1974). Accordingly, the Court of Justice in its resolutions referred, in particular, to the European Convention on Human Rights.

In its subsequent decisions, the Court referred to the European Convention on Human Rights on the right to property, the right to respect for private and family life, home and correspondence, the right to marry, freedom of association, freedom of thought, freedom of expression, the non-retroactivity of criminal law, the principle of legality of criminal offenses and penalties, the right to a fair trial. For example, the Court confirmed that Article 11 of the Convention on Freedom of Association is one of the fundamental rights protected by the Community legal order.<sup>14</sup>

In one of its decisions, the Court expressly stated that draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international instruments for the protection of human rights on which the Member States have

<sup>13</sup> Ion Diaconu, op.cit., p.295.

<sup>14</sup> Jean-François Renucci, *Tratat de drept european al drepturilor omului*, (Bucharest: Hamangiu, 2009), p.666-680 and 682-699.

collaborated or acceded and it has given a “special significance” to the European Convention in this regard.<sup>15</sup>

Then the Court’s jurisdiction to review the compatibility of national measures implementing Community law with the European Convention on Human Rights was recognized and switched to direct invocation of European Court of Human Rights on the grounds of its resolutions.<sup>16</sup>

Regarding the implementation of these principles, the Court stated the following:<sup>17</sup>

- shall not accept actions incompatible with fundamental rights recognized and guaranteed by the constitutions of the Member States;

- international documents on human rights on which the Member States have cooperated on or acceded may give some indication of what is necessary to take into account within Community law, which allows the integration of the European Convention on Human Rights into EU law through general principles, as European minimum standard;

- fundamental rights should not be regarded as absolute, but taking into account the social function of property and protected activities by applying limitations justified by objectives of general interest pursued by the Community.

The Court considered human rights as a condition of the lawfulness of Community acts and agreed that specific measures can be taken to protect the Community’s human rights without amending the Treaties and Community’s objectives.

Although the European Convention on Human Rights is a prerogative source of inspiration for the Court in Luxembourg, it must report the European interpretation (carried out by the European Court of Human Rights and must be taken together with the Convention’s provisions, with whom it has an inherent and common body) with Community judiciousness with specific Community construction.<sup>18</sup>

The European Court of Justice may invest the provisions of the European Convention on Human Rights with an autonomous interpretation and ensures the rights only a “protection by ricochet”, namely the situations related to the application of Community law. Therefore, theoretically, it may arise in cases of discrepancies of interpretation.<sup>19</sup>

Although formally, the Convention does not affiliate the Court in Luxembourg, it cannot ignore the interpretation and application of the Convention by the Strasbourg Court, especially since some concepts of the Convention received autonomous meaning and interpretation by it.

The Court of Justice has sometimes exceeded borders imposed by the European Convention, inferring some fundamental rights which are not provided for this: the right to free exercise of economic activity, the right to export and right to family reunification.<sup>20</sup>

In recent jurisprudence, the Court in Luxembourg began to refer directly to the jurisprudence of the Strasbourg Court, adopting its interpretation.<sup>21</sup>

The two jurisprudences met especially in the protection against discrimination, and other rights such as property or freedom of expression. Most times, the positions of the two European Courts are converging, especially in the socio-economic measures taken by states (social contributions related to the age criteria for retirement, pension rights of teachers and so on). In the field of non-discrimination, the two Courts are located on different positions; the Community law is providing more extensive protection against discrimination than the European Court of Human Rights.<sup>22</sup>

<sup>15</sup> Decisions in cases *Rutili*, no.36/75, Rec.,1219, pct.32 and *ERT* no. C-260/89, Rec.,2961, p.41.

<sup>16</sup> Decisions in cases *Wachauf*, no.5/88, Rec.2609 and *Roquette Freres SA*, no. C-94/2000, pct.29.

<sup>17</sup> Ion Diaconu, op.cit., p.285.

<sup>18</sup> Raluca Miga-Bestelie, Catrinel Brumar, op.cit, p.82.

<sup>19</sup> *Frédéric Sudre*, op.cit., p.143.

<sup>20</sup> Jean-François Renucci, op.cit., p.681-682.

<sup>21</sup> In case *Baustahlgewebe GmbH c. Comisiei* (1995).

<sup>22</sup> Bianca Selejan-Guțan, op.cit., p.246.

### 5. Charter of Fundamental Rights of the European Union

The Charter was enacted by the European Council at the Summit in Nice on December 7, 2000, as inter-institutional agreement (joint statement of the European Parliament, the EU Council and the European Commission). Along with changes resulting from the 2004 IGC, the Charter was solemnly proclaimed in Strasbourg on December 12, 2007 and separately published in the Official Journal. Currently, it has the same legal value as the Treaties, in accordance with paragraph 1 of Article 6 of the EU Treaty as amended by the Treaty of Lisbon. The Charter of Fundamental Rights became, from the perspective of the Lisbon Treaty, a legally binding document of the European Union, which engages the EU institutions, the Member States when implementing Community law and, as far as it relates to individual acts of individuals is mandatory for EU citizens.

The Charter is the first international legal instrument which gives expression to the principle of indivisibility of human rights, including political, civil, economic, social and cultural rights, all being envisaged as shared values of the Union.

The rights presented in the Charter are grouped into six titles as: dignity, freedom, equality, solidarity, citizenship and justice.

Two articles of the Charter bring under regulation the relations with other documents in the field of human rights, in particular the European Convention: Article 52 paragraph 3 and Article 53. The Article 52, paragraph 3 provides that "Insofar as this Charter contains rights which correspond to rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms, the meaning and scope are the same as those presented by the said Convention". At the same time, Article 53 provides that "Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognized, in the fields of application, by Union law and international law and international conventions to which the Union or all the Member States are parties, and in particular the European Convention on Human Rights and Fundamental Freedoms, and the constitutions of the Member States".

Consequently, the international instruments are regarded as a *minimum standard* to which the protection provided by the Charter may be increased, but not decreased.<sup>23</sup>

The repeated references to the European Convention on Human Rights and the designation of its provisions as a source of fundamental rights is intended to substantially close in the two documents, in order to ensure their uniform interpretation and application.

However, full coherence makes the accession of the European Union its self-necessary in order to avoid a double standard in implementing the two documents and the decisions of the two Courts, keeping the autonomy of the Community's legal.<sup>24</sup>

A first step towards incorporating the Community legal system of rights protection under the European Convention on Human Rights was made by the European Court of Human Rights in the case *Bosphorus Airways v. Ireland* (2005).<sup>25</sup> In its decision, the Court asserted that any measures taken by Member States under other international obligations undertaken are justified as long as these organizations are considered to protect human rights, both on offered material guarantees and the mechanisms of control of their protection, in a way that it can be considered *at least equivalent* to that provided by the Convention.

The European Court used for this particular decision a special criterion in order to determine the responsibility of the States: it shall not be engaged "if a State does nothing but to implement international legal obligations". Thence, the *discretion criterion* is decisive in this regard. If the State is provided with such power in the execution of its international obligations, then it remains

---

<sup>23</sup> Ion Gâlea, *Aderarea Uniunii Europene la Convenția Europeană a Drepturilor Omului*, (Bucharest, C.H.Beck, 2012), p.34.

<sup>24</sup> Ion Diaconu, *op.cit.*, p.302.

<sup>25</sup> Bianca Seleşan-Guțan, *op.cit.*, p.248.

responsible for its acts regarding the observance of the European Convention. For obligations arising from the Community law, however, the Court has created “immunity” from this point of view.

It was given a special role in human rights and community institutions to the Charter of Fundamental Rights of the European Union.

In 2001, the European Commission stated that any legislative proposals and regulatory act shall be subject, even during its development under normal procedures, of *a priori* compatibility control with the Charter. The EU Council has indirectly recognized the importance of the Charter by referring to it along with the European Convention, in the preamble to Directive 2003/86 on the right to family reunion.

The Charter has been regarded as the basis for a decision by the Court of First Instance<sup>26</sup>, and also the European Court of Human Rights referred to the Charter in one of its decisions.<sup>27</sup>

The Charter was mentioned for the first time, once with the acknowledgement of its importance for Community law in a decision of the Court of Justice of the European Communities - *European Parliament v. Council of European Union*, June 27, 2006.<sup>28</sup>

The case was also related to Directive 2003/86, and the Court in Luxembourg, recognizing a wide margin of appreciation of States on granting the right to family reunion, which made a “symbolic recognition” of this document’s role: “If this Charter is not a legal instrument with binding force, the Community legislature apprehended, however, to recognize its importance, by stating in the second consideration of the Directive that the latter observes the principles recognized by Article 8 of the European Convention, and also by the Charter”.

In the same decision, the Court also displays its own view on the connections between the Charter and the European Convention: “the primary objective of the Charter (...) is to reaffirm the rights deriving mainly from the constitutional traditions and international obligations common to the Member States, the Treaty on the European Union and the Community Treaties, the European Convention on Human Rights, the Social Charters enacted by the Community and the Council of Europe and the case law of the Court (...) and the European Court of Human Rights”.

## 6. European Union’s Accession to the European Convention of Human Rights

The EU Council requested in 1994 a notification emanating from the Court of Justice regarding the possibility of the European Community to become a part to the European Convention on Human Rights, based on the Commission’s proposal which had been submitted in 1979. The Court gave a negative opinion (Opinion 2/94), mentioning Community’s lack of competence to accede to this Convention, and noting that the only solution would be adopting a special clause in the treaties. The Court affirms it cannot decide on the compatibility of accession to the 1950 Convention by the EC Treaty, in the absence of sufficient information on the institutional arrangements involved.

According to Article 6, parag.2 of the Treaty on European Union as amended by the Treaty of Lisbon, the Union shall accede to the *European Convention on Human Rights and Fundamental Freedoms*. *Union’s competences as defined in the Treaties shall not affect the accession*.

The accession shall be accomplished according to the Protocol No. 8 appended to the Treaty of Lisbon, which provides that the Agreement on EU accession to the European Convention referred to in paragraph 2 of Article 6 of the Treaty on European Union shall reflect the necessity of preserving the specific characteristics of EU and EU law, in particular with regard to: a). specific arrangements for the Union’s possible participation among the control authorities of the European Convention, b). mechanisms to ensure that proceedings of non-Member States and individuals actions are correctly directed against Member States and / or, where against the European Union.

---

<sup>26</sup> In case *Max mobil Telemkommunikation Service GmbH c. Comisia*, no. T-54/99, din 30 ianuarie 2002, Rec. 2-313.

<sup>27</sup> In case *Christina Goodwin c. Regatului Unit*, complaint no. 28957/95.

<sup>28</sup> Bianca Selejan-Guțan, op.cit., p.249.



Also, Article 2 of the Protocol states that this agreement should ensure that the accession of the EU shall not affect the powers of the European Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States with regard to the European Convention and the Protocols thereto, the measures taken by Member States derogating from the European Convention, in accordance with Article 15 of thereof and also diffidence regarding the European Convention enunciated by Member States in accordance with Article 57 of the Convention.

At the same time Protocol No. 14 to the European Convention of Human Rights, enacted on May 13, 2004 and entered into force on June 1, 2010, contains an express provision allowing EU accession to the Convention (Article 17 paragraph 2).<sup>29</sup>

Following the entry into force of the Lisbon Treaty, the EU Council began negotiations in order to establish the negotiating mandate for the finality of the EU's accession Agreement to the Convention. The Commission was appointed as a negotiator of the European Union. After the enactment on June 4, 2010, the mandate given by the Council to the Commission to negotiate the accession to the Convention, the negotiations began between the EU and the Member States of the Council of Europe on July 7, 2010.<sup>30</sup>

### Conclusions

Designed to decrease the democratic deficit of which the European Union was repeatedly accused, in order to approach the EU to its citizens, the Charter is integrated into the overall development of the European Union for the consecration and protection of human rights and fundamental freedoms. It is the expression of a political and legal consensus of Member States, the result of an evolution often difficult, but a starting point for new developments in this area.

EU's accession to the European Convention of Human Rights has clearly become a necessity, as long as Member States are parties to the Convention. In so far as they transfer some sovereign powers to the EU institutions, it is difficult to admit that during their exercise this may act without complying with the Convention. There shall be a Europe of "two speeds" on human rights.

The accession of the EU to the Convention would avoid jurisdictional conflicts arising from the different decisions in similar cases or even in the same case, not on the existence of rights but of their contents, such situations are already arising.

### References

- Ion Gâlea – *Aderarea Uniunii Europene la Convenția Europeană a Drepturilor Omului*, C.H.Beck, Bucharest, 2012.
- Nicolae Purdă, Nicoleta Diaconu – *Protecția juridică a drepturilor omului*, Universul Juridic, Bucharest, 2011.
- Bianca Selejan-Guțan - *Protecția europeană a drepturilor omului*, C.H.Beck, Bucharest, 2011.
- Raluca Miha-Besteliu, Catrinel Brumar – *Protecția internațională a drepturilor omului*, Universul Juridic, Bucharest, 2010.
- Ion Diaconu - *Drepturile omului în dreptul internațional contemporan*, Lumina Lex, Bucharest, 2010.
- Jean-François Renucci – *Tratat de drept european al drepturilor omului*, Hamangiu, Bucharest, 2009.
- Frédéric Sudre- *Droit européen et international des droits de l'homme, 6e édition refondue*, Paris, PUF, 2003.

---

<sup>29</sup> Nicolae Purdă, Nicoleta Diaconu, *Protecția juridică a drepturilor omului*, (Bucharest: Universul Juridic, 2011), p.86.

<sup>30</sup> Ion Gâlea, op.cit., p.92.