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УДК 341.6
DOI 10.37772/2518-1718-2021-3(35)-3

EU VALUES REFLECTION IN ECTHR CASE LAW

The article focuses on the importance of the European Union's values in the development of the legal system of the member states of the Convention for the Protection of Human Rights and Fundamental Freedoms, and for the functioning of the European Union, further integration processes and their reflection in the case law of the European Court of Human Rights. The ideological interpretation and practical implementation of these decisions are reflected.

Keywords: European Court of Human Rights; European Union; Member States of the European Union; legitimate goal.

Problem setting. Carrying out scientific research in the field of functioning and activities of the European Union on the basis of its values, the importance of taking into account the interests not only of the European Union as a supranational organization, but also the interests of Member States and reflecting all this in the case law of the European Court of Human Rights is the core of the balance of interests and law and order.

Analysis of recent researches and publications. Many scientific articles have been devoted to the study of values of the European Union on which it is built and its reflection in the case law of the European Court of Human Rights. In particular, this topic has been the subject of research by domestic researchers such as Karaman I., Kozina V., etc and by foreign researchers such as D. J. Harris, M. O'Boyle, C. Warbrick and others.

The purpose of this research is to determine the importance of the values of the European Union and its reflection in the case law of the European Court of Human Rights.

Article's main body. There is one important expression: «A value arises from a ranking». In each country, the community chooses which values are important to it. Yes, on the one hand, the whole world tries to adhere to fundamental values that should be the same for everyone, regardless of country. But cultural, religious, and other differences can affect the conditional division of certain values for each community, which is presumed to exist. Probably, this advantage is given subconsciously, a certain passive affection, which can not be predetermined, which are formed due to culture, religion, upbringing, level of education as well as legal awareness and culture. There is a possibility that for some cultures the superiority of certain values established by another culture may be unacceptable, incomprehensible and even illogical (or illegal). Such an abyss can occur especially with Muslim countries. But it becomes clear that values have a deep significance for the respective social system due to the fact that they greatly influence, control and regulate any social system within any country. In any case we could definitely state that values – are the foundation of any society.

Each country is based on its own historical experience and this is how values are formed. Without understanding and not realizing its own values, society probably loses its self-identification and the vector of its own development.

The creation of the European Union was made possible precisely by uniting around common values. This, in turn, is a prerequisite for further integration processes. Such values are of great ideological importance, as they determine the direction of development of both the European Union and the Member States. Given that the European Union has not yet acceded to the European Convention on Human Rights and is therefore not a party to the Convention, this calls into question on the human rights withing the European Union, which it proclaims as one of its values, and given that all values are interlinked, it is a kind of question – the legitimacy of the European Union and the EU's adherence to its values, proclaimed by it. Futhermore, it is undoubtable that values (like any other social phenomena) could be afrect-

ed by different social life changes, espessially by the achievements of science. That is why the question on reflection of EU values in case law (epessially it's evolution) is quite relevant these days and is an object of legal study.

It is known that the results and consequences of the World War II played the greatest role in the beginning, establishment and development of European integration processes. At that time there was a dynamic development of European values, which led to the concept of anthropocentrism. The European community paid attention to the ideas of Aristide Briand, who would later be called the «father and peacemaker of Europe.» He was a man who was prone to decisions that went against the majority. Brian was aware of the problem of a post-war settlement and the necessity to develop a new approaches to Franco-German reconciliation. He was a pacifist and a man of far-sighted European views, and therefore it could be considered that this also gave impetus to European processes, especially in defining the values on which Europe is built. Values are enshrined in the Treaty on European Union (hereinafter – TEU) following the amendments to the Lisbon Treaty. Namely the article 2 TEU and the article 1a Treaty of Lisbon say us that: «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 pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail» [2, p. 44–45].

It should be underlined that the rights of people enshrined on the basis of such values are more widely disclosed at the national level of each individual state. After all, the Founding Treaties do not contain a systematic list and such a list of values is enshrined only in the Charter of Fundamental Rights of the European Union. And if, for example, the classification of rights in the constitutions of many states is based on generations of human rights, then the rights proclaimed in the Charter are united according to the values on which the European Union (hereinafter – EU) is built. By establishing EU citizenship, creating a space of freedom, services, goods, labor, capital, the European Union makes namely a person the foundation of its activities. However, at the same time, by consolidating common values, the EU recognizes national cultural features and traditions and features in the organization of the public administration system. The Charter of Fundamental Rights of the European Union states: "The European Union shall promote the preservation and development of these common values while respecting the diversity of cultures and traditions of the peoples of Europe, as well as the national identity of Member States and their public authorities at national, regional and local levels" [2, p. 113–114].

One of the values on which the European Union is built is democracy. On the one hand, democracy in this context is a feature of European identity, but on the other hand, there are long debates as to how democratic the European Union is, given that there are no people responsible for what is decided in the EU at one level or another, the lack of opportunities for citizens to have the right to make political decisions, because the European Parliament is the only institution where such an opportunity is presented. In addition, one of the key shortcomings of the European Union decision-making system is the so-called notion of "majority tyranny", according to which Member States are forced to agree with the will of European integrators [1, p. 34–40]. It should be emphasized that democracy comes from the liberal traditions of the Member States and this is another uniqueness of the European Union with a rather contradictory political nature. There is an opportunity to discuss the liberal bases on which the European Union is also built, as opponents of liberalism often emphasize that liberal values, however, do not take into account the needs of the people. That is why democracy as one of the values on which the European Union is built and at the same time undermines the legitimacy of the European Union [2, p. 1–2].

Given the fact that the rule of law and democracy are values of the European Union it is important to say that the EU is not a party to the the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter — ECHR), which, in turn, means that the actions of EU institutions, agencies and other bodies are cannot currently be appealed to the European Court of Human Rights in Strasbourg.

EU accession to the ECHR will allow individuals to lodge their complaints about the EU with the Eropean Court of Human Rights (hereinafter – ECtHR) and, accordingly, the EU could be obliged to correct any set by the Court. Accession of the EU to the ECHR had been considered in the past and for now it is not achieved but in the process at the same time.

There are many perceived advantages in EU accession to the ECHR. A formal linking of the EU and ECHR could be seen as stressing EU concern with human rights, and also eliminate charges of double standards, based on the criticism that whereas the EU requires all of its Member States to be parties of the ECHR, the EU itself is not a party. EU accession to the ECHR would also alleviate the situation in which individuals may find themselves when faced by possible breaches of the ECHR by EU institutions, given the present situation in which there is no possible remedial action in Strasbourg unless EU law has been implemented by some act on Member State territory.

An interesting fact that, for some time, a quite specific obstacle to EU accession was the Luxembourg Court's Opinion 2/9455 on whether the Community had the power to accede to the European Convention. In that Opinion the European Court of Justice (hereinafter – ECJ) held that the Community had no competence to accede to the ECHR as there was no legal basis in the Treaty for accession, rejecting the argument that Article 308 of the European Community (hereinafter – the EC Treaty) might serve as a base. Therefore, accession could only be brought about by way of Treaty amendment. Article 6(2) of the TEU, as amended, has removed that obstacle, providing a legal basis for EU accession, reading as follows: «The Union shall accede to the Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties». It was also necessary for the ECHR to be amended, and a new Article 59(2), introduced by Protocol No 14 to the ECHR, makes provision for the accession of the EU [6].

With accession, the EU would become the 48th party to the ECHR. The EU would be represented with its own judge at the European Court of Human Rights in Strasbourg, and would have to comply with judgments of this court in cases brought against it. Article 6(2) of the TEU now makes it an obligation for the EU to accede to the ECHR and it says us: «The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties».

But the crucial point also in that the accession procedure is not a simple affair. Given the particular characteristics of the EU, and its specific political nature as a sui generis or not typical international organization, accession will prove challenging. The accession process must take account of these challenges as well as the complicated procedures for accession required by EU law set out below. Accession must follow the long and complex mandatory procedure that governs all EU agreements with third countries and international organizations, set out in Article 218 of the Treaty on the functioning of the European Union (hereinafter – TFEU). For such an agreement to be concluded, Article 218 sets a requirement of unanimity in the Council of Europe (hereinafter – CoE), the consent of the European Parliament (by a 2/3 majority) and its ratification in all EU 59 and CoE Member States. Further, it is probable that one or more Member States will ask the Court of Justice of the European Union (further – CJEU) for an opinion under Article 218(11) of the TFEU on whether the accession treaty is compatible with EU law [4, p. 658–670].

If we are talking about the reflection values of the EU in cases of ECHR and the implementation of Strasbourg judgments in the State Members, then considering the peculiarities of the legal order, the principle of independence of EU law in this sense is not an obstacle to accession to the European Convention on Human Rights. And in this case, after acceding to the Convention, the European Court on Human Rights will continue undoubtedly take more into account the specifics and peculiarities of European Union law.

However, the European Court of Human Rights even already takes into account the specifics of the law of the European Court of Human Rights. We can see this in the example of the following solutions.

The first one is M.W. Matthews v. the United Kingdom.[1]

This case concerns human rights, namely active right to vote. The case is the most remarkable due to the fact that the right to free elections in this case in the territory with a contradictory geopolitical position is greatly important, because, in any case, elections promotes democracy.

The applicant was a British citizen, who was born in 1975 and resident in Gibraltar. His application was against the United Kingdom. Her complaints that she was not entitled to vote in the 1994 elections to the European Parliament. The applicant invokes Article 3 of Protocol No. 1 to the Convention.

The case concerned the question whether there has been a violation of Article 3 of Protocol No. 1 to the Convention and - whether there has been a violation of Article 14 of the Convention, taken together with Article 3 of Protocol No.1 which guaranteed free elections to the European Parliament without holding elections in Gibraltar, which is British Crown colony for now and which, in turn, leads to political conflicts between Great Britain and Spain.

Article 3 of Protocol No. 1 provides as follows: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature". And article 14 of the Convention says us: «The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status».

The problem was that the principles for the election of representatives to the European Parliament, common to all EU Member States, were determined by the Act concerning the election of the representatives of the Assembly by direct universal suffrage from 1976 (herein-

[1] Application no. 40302/98 by Michael W. Matthews against the United Kingdom.

after – EC Act on Direct Elections). Most of the provisions of this act are currently included in the national election legislation of many Member States. The UK Government argued that, under the act, the European Parliament did not have the status of a legislature, firstly, and secondly, the act was of a recommendatory nature and not binding. The Act itself is therefore not usual international agreement for which the United Kingdom may be responsible under the Convention, but is part of European Community, a distinct legal order for which the United Kingdom cannot bear responsibility under the Convention. And the exclusion of Gibraltar from the European Parliament elections, therefore, derives from an act for which the United Kingdom has no responsibility under the Convention.

The Government add that there is no doubt that at the time of the EC Act on Direct Elections, the European Parliament (or Assembly, as it then was) was not a legislature within the meaning of Article 3 of Protocol No. 1, and even on the applicant's analysis, the Government have not taken any specific step since then which could give rise to the responsibility of the United Kingdom under the Convention.

The Government argued that, according to the Protocol, the legislature should be understood as the national legislature and not as the legislature of a supranational organization such as the European Union is.

In addition, the United Kingdom emphasized that, given that Gibraltar was not part of the customs union, was not part of the common market in agriculture, that it was exempt from value added tax, elections could not be held in that territory.

The European Court of Human Rights had emphasized that the concept of «legislature» includes more than a national legislature. Considering also that EU had legislated in many areas affecting Gibraltar, including free movement of people, the environment and consumer law, it had become an integral part of the law in Gibraltar. Therefore, it was and it is a 'legislature' institution.

The European Court also ruled that Gibraltar is part of the European Union and even despite the fact that EU law applies in Gibraltar with some exceptions, such as agricultural or commercial policy. The central problem, according to the Court, was the complete absence of elections to the European Parliament in Gibraltar, not the way in which they should have been held. The Chamber of the Assembly, which was the national legislature, had the power to legislate on internally defined issues. However, the article of the Convention must be applied to Gibraltar in accordance with local requirements.

The national "legislature» in Gibraltar is the House of Assembly of Gibraltar, but it is essentially a limited and truncated local legislature specifically debarred by the Gibraltar Constitution Order 1969. Gibraltar's constitutional situation as a dependent territory restricts its legislature from adopting other issues, such as external ones, for example.

Thus, in this decision, the Court concluded that, first, the territory of Gibraltar, which is a territory with a rather complex geopolitical situation and a territory dependent on the United Kingdom, is subject to EU law, as Gibraltar is part of the European Union. Secondly, it was clearly defined that the term «legislative» should be interpreted not as a national legislature, taking into account the specific legal status of all Member States and the legal nature of the European Union, but also to apply to a supranational organization, given the exclusive competence in some European Union matters and other features. And, thirdly, in this decision, given all the facts, the Court stated that the elections to the European Parliament had to be held in Gibraltar.

The second case is Moustaquim v. Belgium[1], and it will concern the issue of discrimination on the grounds of citizenship.

The Moroccan national had been living in Belgium with his family since 1965. After being charged 22 offences and being found guilty, a Belgian court sentenced him to 26 months in prison. A royal deportation order was also issued for a Moroccan citizen on the foundation that he was a threat to the society and breaced public order. Moustaquim's father, acting as his representative, applied for the request of the deportation order and its invalidation, but the application was withdrawn. Moustaquim was deported for 5 years. Later he appealed to the European Court of Human Rights, alleging a violation of Articles 8 and 14 of the European Convention on Human Rights. Namely, Article 8 concerned respect for private and family life, Article 14 concerned the prohibition of discrimination.

In its conclusion, the Court took seriously the state's concern about the maintenance of public order and recognized that the deportation was provided by law and pursued a legitimate aim – the prevention of social disorder and that it is a legitimate practice of international law. Nevertheless, the State, by interfering with the rights of the people enshrined in the Convention, must always justify a public need and these restrictions must be commensurate with the achievement of a legitimate aim. In the present case, the court focused on the fact that the offenses incriminated against Moustaquim concerned the period of time when he was a minor, so there was a significant period of time between these offenses and the order for deportation. Moreover, Moustaquim spent his whole life in Belgium and only twice visited his country of origin, all his relatives lived in Belgium, and some even received Belgian citizenship. In the light of all these circumstances, the court concluded that the deportation

[1] Application no. 12313/86. Case of Moustaquim v. Belgium

order violated the applicant's right to family life, ie a violation of Article 8 of the Convention had been established and was disproportionate to the purpose established by law. The degree of interference in family life was not necessary in a democratic society in this case.

With regard to discrimination and violation of Article 14 of the Convention, the Court recalled that Article 14 seeks to protect persons who are already in the same position against discriminatory differences in the enjoyment of the rights and obligations recognized by the Convention and its Protocols. And the applicant's status could not be compared with that of the Belgian nationals, so there had been no violation of Article 14 of the Convention.

Conclusions and prospects for the development. Thus, we can conclude that the values of the European Union are the basis for the construction and its formation and the basis for further integration processes. Unfortunately, there are still many unresolved issues related to the deficit of democracy, which to some extent calls into question the legitimacy of the activities and functioning of the European Union. Although the European Union is not yet a party to the Convention for the Protection of Human Rights and Fundamental Freedoms, this issue should be resolved in the future, also in view of the commitments made on this issue. However, despite some shortcomings in the functioning of the European Union, it is a fairly powerful grouping of Member States. The European Court of Human Rights today is a necessary element in the development of the legal system of the countries party to the Convention for the Protection of Human Rights and Fundamental Freedoms. ECJ case law is designed to detail the interpretation of human rights and determine their legal nature. The European Union, by consolidating values, has thus determined the direction of its activities and functioning, and the European Court of Human Rights is designed to ensure respect for human and civil rights and values, which, despite cultural, historical and other differences, may not drastically differ from the state to the state, but which, in general, are fundamental and the same for all. Judgments of the European Court of Human Rights are not only law-enforcement in nature, but also interpretative, as previously demonstrated.

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ОТРАЖЕНИЕ ЦЕННОСТЕЙ ЕВРОПЕЙСКОГО СОЮЗА В ПРАКТИКЕ ЕВРОПЕЙСКОГО СУДА ПО ПРАВАМ ЧЕЛОВЕКА

Статья посвящена значению ценностей Европейского Союза в развитии правовой системы как стран-участниц Конвенции о защите прав человека и основных свобод, так и для функционирования Европейского Союза, дальнейших интеграционных процессов и их отображения с толкованием в практике Европейского суда по правам человека. Отражено идеологическое толкование и практическое воплощение данных решений.

Ключевые слова: Европейский суд по правам человека; Европейский Союз; государства-члены Европейского Союза; легитимная цель.

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ВІДОБРАЖЕННЯ ЦІННОСТЕЙ ЄВРОПЕЙСЬКОГО СОЮЗУ В ПРАКТИЦІ ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ

Постановка проблеми. Стаття присвячена важливості цінностей Європейського Союзу у розвитку правової системи держав-членів Конвенції про захист прав людини та основних свобод, а також для функціонування Європейського Союзу, подальші інтеграційні процеси та їх відображення у справі закону

Питання вивчення цінностей Європейського Союзу та детальний аналіз права Європейського суду з прав людини, де саме ці значення згадуються та інтерпретуються, є мало дослідженими в Україні. Зазначеною проблематикою займалися вітчизняні вчені, такі як Караман І., Козіна В., і зарубіжні дослідники, зокрема, Д.Дж. Гарріс, М. О'Бойл, С. Варбрик та інші.

Метою цього дослідження є визначення важливості правових цінностей Європейського Союзу та їх відображення у прейедентному праві Єсропейського Суду з прав людини.

Виклад основного матеріалу. Європейський Союз був створений на основі спільних цінностей держав-членів. Віддзеркалення цінностей також є гарантією майбутніх інтеграційних процесів. Вони мають велике ідеологічне значення. Враховуючи, що Європейський Союз ще не приєднався до Європейської конвенції з прав людини і тому не є стороною Конвенції, це ставить під сумнів права людини в Європейському Союзі, які він проголошує однією зі своїх цінностей. І враховуючи, що всі цінності взаємопов'язані, це своєрідне питання - легітимність Європейського Союзу та дотримання ЄС щодо її цінностей, проголошених ним.

Висновки і пропозиції. Питання приєднання Європейського Союзу до Конвенції про захист прав людини повинне бути вирішене у майбутньому як питання про легітимність Європейського Союзу та дотримання ЄС цінностей, проголошених ним. Питання реалізації демократії як правової цінності ЄС залишається невирішеним через те, що Європейський парламент є єдиним закладом, де реально діє принцип демократії. Незважаючи на вищезазаначене, Європейський суд з прав людини сьогодні є необхідним елементом розвитку правової системи країн.

Ключові слова: Європейський суд з прав людини; Європейський Союз; Держави-члени Європейського Союзу; легітимна мета.

За ДСТУ 8302:2015 цю статтю слід цитувати:

Boichuk D. S., Torgashova K. O. EU values reflection in the ECtHR case law. *Law and Innovation*. 2021. № 3 (35). С. 23–29.