THE EUROPEAN PUBLIC ORDER AND THE REFORM OF THE CONTROL MECHANISM FOR THE OBSERVANCE OF THE RIGHTS STIPULATED BY THE EUROPEAN CONVENTION OF HUMAN RIGHTS

Nicoleta Adriana ODINĂ[*]

ABSTRACT: *The mechanism for the protection of human rights on the European level is heading towards a reform aimed at reducing the time consecrated by the European Court to the inadmissible or repetitive complaints and petitions, granting at the same time the due importance to the complaints raising important issues.*

We may suppose that in its future jurisprudence in the application of Protocol no.14, the Court will interpret the new admissibility criteria introduced by this protocol so that it should not affect the spirit of the protection system of the human rights guaranteed by the Convention.

The solution for the existence of a unitary conception in the European space, as regards the approach of fundamental rights issues, is a political one; it is provided, on the one hand, by the Lisbon Treaty, and on the other part, by the Protocol no.14 of the European Convention of Human Rights.

From the perspective of the new regulations in the field and of the two Courts' jurisprudence – the Court of Strasbourg and the Court of Luxembourg – one may conclude that there is an evident reformatory trend for building a unified law of human rights on the European level, even if we will have two courts and two Conventions in the matter.

KEYWORDS: *fundamental rights, common fundamental values, the reform of the European Convention of Human Rights, filtering criteria for the complaints and petitions brought before the Court, "the well-established jurisprudence of the European Court*"

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Order is either legic-natural necessary uniformity and regularity, or legic-normative uniformity and regularity.[1]

[*] Assitant professor, PhD., „Eftimie Murgu" University of Reşiţa, ROMANIA.

[1] Gh. Mihai, *Fundamentele dreptului*, vol. I-II, Editura AllBeck, Bucureşti, 2003, p. 255.

Legal or juridical order constitutes the object of many authors' research (among H. Kelsen, J. Raz, R. Caracciolo etc.) who claim that society is in a normed order, through a comprehensive system of norms – legal, political, economic and moral. It follows that law participates in this order. Each component item of normality incorporates specific values and receives direct or indirect influences from the others (such as: law *and* morals, law *and* economy, law *and* religion). Either connected or interdependent, the components tend to match themselves in order to get organised into a dynamic unit. The participative order of law would consist in guaranteeing integrity and assuring the items' efficiently, as, by its obligatory nature, it organises people' efforts, so that the individual and public interest could be balanced.[2].

As for the European community legal order and the ideea of European unity, we have encountered referrals to the creation of certain forms of European associations at Plato, Aristotle and later on Cicero. The attempts to generalise Rome's domination upon the entire Europe based on the *pax romana* principle is considered to be the first attempt to institute a single continental system. If Rome's domination was ephemere, the Roman law system has been maintained for centuries, as still constitutes one of the grounds of legislations' matching[3].

The Middle Ages, as well as the modern epoch, also witnessed attempts of associations among the European states. Certain scientists elaborated interesting federalist projects, such as Pierre Dubois, Maximillian Bethune, Abby Saint Pierre, and later on Immanuel Kant, Adam Czartorski, Joseph de Maestre, Johann Kaspar Bluntschchli etc[4].

In the period between the two world wars Aristide Briand's ideas were affirmed, along with the action of the Pan-European Union, initiated by Richard Coudenhove Kallergi, who elaborated the draft of a Pan-European Pact.

In essence, the inter-war period exhibited two trends: the confederalist trend, which intended a confederation of sovereign and equal European states, and the federalist trends, involving more enhanced mechanisms of collaboration among countries, a common army, a common Parliament and a Council for the settlement of differences among states[5].

The period between the two World Wars still remains a period of confrontation, of redimensioning of forces, in which the very diverse national interests, sometimes absolutely opposite, made it impossible to reach a long-term agreement upon a European mechanism[6]. The European idea has undergone, after the Second World War, a revigoration, as a result of the European countries' interest to secure their independence and development protected from the USSR's and the USA's domineering tendencies, countries intending to turn Europe into an influence area. In this context the European Communities appeared.

In order to eliminate the reluctance responsible for the 2004 failure, a first measure consisted in renouncing to the constitutional concept stipulating the abrogation and replacement of all previous EU Community's treaties with a single text called *Constitution*. This time one used the classic procedure followed by the EU community institutions, which consists in the modification of the previous treaties by way of amendments, in the line of the Amsterdam and Nice treaties. Obviously, the 2004 draft represented more than such an

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[2] Idem.
[3] B. Marian, B. Marian, *Izvoarele supralegislative ale dreptului pozitiv*, (teză de doctorat), Universitatea de Vest din Timișoara, Facultatea de Drept și Științe Administrative, 2009.
[4] Fr. Luchaire, *Le droit européen. Son application en France*, Economica, 2004, pp. 2-4.
[5] S. Leclerc, *Droit institutionnel de l'Union Européenne,* Gaulino Editeur, Paris, 2003, p. 80.
[6] V. Duculescu, *Este posibilă „relansarea" Tratatului Constituţional după reuniunea Consiliului european de la Berlin*, în Revista de drept public, nr. 2/2007, pp. 1-2.

operation, it expressed a political will of reforming the European construction; it introduced a clear normative hierarchy and opened the prospect for substantial progress in this direction.

As shown in the jurisprudence, the European Community constitutes a new legal order of international law in whose benefit the states limited their sovereign rights, though in restricted domains and where its subjects are not only states but also their citizens, so that, irrespective of the legislation of the member states, the community law not only imposed obligations to persons, but is also meant to confer them rights that should become part of their legal heritage[7].

The transfer done by the states from their legal system to the EU community system of some rights and obligations bears in itself a permanent limitation of their sovereign rights, against which a ulterior unilateral act incompatible with the concept of community cannot prevail, as no act of a County Council may ignore the normative acts of the central power. No rule of internal law may be invoked thus before the national courts against the community law as an autonomous and original source, without losing its community character, which means that in the binomial community law – national law the former is essential, a possible conflict between the community rules and the national rules being solved by applying the principle of the priority of the community law, which confers it unconditional pre-eminence.

Consequently, a new legal order will constitute the basis of the Union, which will have to impose itself along or within the national legal order of each member state.

Is EU community law independent from the various national legal systems or should it be integrated in a way or another into this system or in a hierarchic system of efficacy? This remains a problem to solve, but we observe at present that when the community legal order is expanded, the space remained to the national legal order gets narrower (...)[8].

We must remark that the community treaties exhibit in their turn a constitutional character, in the sense that, as regards its essential aspects, the European construction has evolved and is acting as though its founding texts were not only international treaties, but constituted true constitutional charts. It is not a mere doctrine appreciation, but also a constant jurisprudence of the Court of Justice, according to which the European Community is a "*Community of law by the fact that neither its member states, nor its institutions escape the control of conformity of their acts with the basic constitutional chart, which is the treaty*"[9].

The recognition of the priority of the community legal order in relation with the internal law, in the matters that are objects of community regulations regarding the policies of the European Union, determined in practice a powerful impact as regards the traditional protecting function of legal and public internal order, modifying it, orienting and *communitising it* towards the priority creation of a economic public order in accordance with the economic and meta-economic public order on the Union level, as well as towards an arrangement of a public order, by using certain political-legal mechanisms, a common space regarding the community freedoms.[10]

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[7] A. Berramdane, J. Rosetto, *Droit institutionnel de l'Union Européenne,* Montchrestien, 2005, p.133 și urm.
[8] R. Motica, Gh. Mihai , *Teoria generală a dreptului,* Editura All Beck, București, 2001, p. 177.
[9] The case Ecologist Party "The Greens" vs. The Euoprean Parliament, decision of 23 April 1986 aff. 294/83.
[10] Punerea în aplicare a dreptului comunitar în ordinea juridică internă -
Antonio Mutulescu http://www.rsdr.ro/Art%2004.pdf

The contour of the internal legal order, especially of public order, will undergo a community determination. *The communitising* of the concept and of the area of legal/public order will impose the recourse, in the plane of internal legal order, to the *principle of proportionality*, so that the states' measures in the plane of different internal public policies should be strictly adequated to the salvation of public order.

Another principle of impact requiring the construction of optimised mechanisms is that of *equality of treatment*, fundamental principle of community law, operationalisation and optimisation of internal legal/public order, and it will be realised in a comunitised context face to the democratic principles of fundamental rights and freedoms guaranteed by the European Convention and by the *Chart of the fundamental rights proclaimed at the Nice summit.*

All these innovative processes, fundamental for the existence and activity of the European Union constitute the premises of the legal integration and of the creation of the European legal space, major goals of the European Union at the present stage of the Union's development.

At the same time, law serves as instrument for reaching the European Union's goals, the normative activity of the European Union imposing itself as an efficient and decisive means in the achievement of all community measures, under the influence of these processes of gradual unification of economic, political, social and legal life, undergo deep transformation both in the *personal situation of the citizens* and in the situation of European Union's member states.[11]

As for the aspect of the international protection of human rights we should remark that at present it represents an evolved legal institution, having a wide range of international sources, institutions and procedures of consecration and guarantee for human rights.[12]

The occurrence and evolution in time of this institution made the human rights issues cease to represent a domain of exclusive national competence, the state's sovereignty being limited to the international legal norms in the field of human rights, that the state is obliged to observe.

Moreover, under the aspect of guaranteeing and consecrating human rights, the international level of protection represents a minimal standard under which or from which the states, on the internal level, can no longer derogate.

The existence of this minimal level does not exclude nevertheless the possibility to assure a protection level higher than the minimum, in the regional systems or national legislations.

Furthermore, we must underline the fact that, internally, the international norms in the matter of human rights which meet the requirements of direct applicability, have effect both in the vertical plane – in the relations with the state and public authorities, and in the horizontal plane – in the relations among private entities, these effects inducing negative and positive obligations in the charge of states, according to the case.

We should also point out that in general democratic states recognise the superiority of international norms in the matter of human rights compared to the norms of internal law in the matter, obviously on condition that the former should be more favourable.

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[11] Idem

[12] C-L. Popescu, „*Protecţia internaţională a drepturilor omului – Surse. Instituţii. Proceduri*", Editura All Beck, Bucureşti, 2000, p.9.

A last aspect that should be mentioned is that the international guarantee of human rights is done especially through the courts specialised in the domain of human rights, established on regional level[13].

As regards the European public order and human rights, remarks have been made in relation with the notion of public order, considered to be "ambiguous, unsure, variable, contingent", being defined in the doctrine, in general, as a "certain order created within a given society".[14]

On the European level public order was widely defined as "a set of norms perceived as fundamental for the European society and imposed to its members".[15]

In this context we should remark that each European state is now integrated into a common system of values, the notion of European public order being closer and closer to the significance attributed to it by recent doctrine, of so-called "institutional Europe".[16]

The European public order discussed today is a mixture of common values – common conceptions, respect for human rights, common patrimony, ideals and principles – and of fundamental rights, guaranteed by the European Convention and interpreted by the Strasbourg Court.[17]

The key concepts of European public order are thus: *the common fundamental rights* and *values* as well as *democracy* and *the lawful state*.

As for the individual's fundamental rights there is the tendency to consolidate the European structures by different means: reform of the European Convention of Human Rights, adoption of the Chart of Fundamental Rights of the European Union and the new trends of national constitutional jurisdictions, aiming at building a "true European standard (...), especially in the domain of rights whose exercise structure and determine democracy".[18]

a) the reform of the control mechanism for the observance of the rights stipulated in the European Convention of Human Rights.

A first trend in the matter of the protection granted to fundamental rights on regional level is determined by the reform of the control mechanism for the observance of the rights stipulated in the European Convention of Human Rights through the prism of the alteration brought by Protocol no.14 to the Convention, meant to efficientise the activity of the European Court in the settlement of individual complaints.

It is generally recognised that the control mechanism of the European Court of Human Rights was "the most efficient contemporary system of international protection of human rights, even before the adoption of Protocol 11"[19] to the Convention.

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[13] D. Iancu (Voin), *Libertatea de exprimare și dreptul la viață privată și de familie – Evoluție. Interferențe. Tendințe*, (teză de doctorat), Universitatea de Vest din Timișoara, Facultatea de Drept și Științe Administrative, 2011.

[14] Fr. Sudre, „*Existe-t-il un ordre public europeenne",* în P. Tavernier (dir.), *„Quelle Europe pur les droits de l'homme ?",* Bruxelles, Bruylant, 1996, p.87.

[15] Fr. Sudre, „*L'ordre public europeen",* în M-J. Redor(dir.), „*L'ordre public: Ordre public ou orders publics? Ordre public et droit fundamentaux",* Bruxelles, Bruylant, 2001, p.110.

[16] C. Picheral, „*L'ordre public europeen. Droit communautaire et droit europeen des droit de l'homme",* Paris, La documentation francaise, 2001, p.16.

[17] B. Selejan – Guţan, „*Spaţiul european al drepturilor omului – Reforme. Practici. Provocări.*", Editura CH Beck, Bucureşti, 2008, p.8.

[18] C. Grewe, H. Ruiz-Fabri, „*Droits constitutionnels europeens*", Paris, PUF, 2002, p.123.

[19] L-A. Sicilianos, „*L'objectif primordial du protocol no. 14 a la Convention Europeenne des Droits de l'Homme: alleger la charge de travail de la Cour*", în G. Cohen - Jonathan, J-F. Flauss (dir.), "*La reforme du systeme de controle contenctieux de la Convention Europeenne des Droits de l'Homme*", Bruxelles, Bruylant, 2005, p.69.

This mechanism, without correspondent in any other international system, based on the recognition of the *right to the individual recourse* to the jurisdiction of European Court which was extended also through the Court's jurisprudence, turned somehow against itself due to the relaxation of the individual access, after the coming into force of Protocol no.11, the Court being confronted with an immense number of complaints.

This relaxation led to the overloading of the role of European Court, hence the necessity of a new reform and of adopting Protocol no.14 to the Convention.

The Protocol came into force on 14 June 2010, being ratified at present by all the signatory states of the Convention, including Romania, and introduces as essential novelty the setting of certain *filtering criteria for the complaints brought before the Court*, grace to the amendments it brings in three important fields: strengthening of the Court's filtering capacity, considering the immense number of complaints brought before it; introduction of a new admissibility criterion meant to eliminate the unimportant cases, measures regarding the repetitive complaints.

The capacity of filtering the complaints addressed to the Court is strengthened by instituting the panel of the single judge, together with the Committees, Chambers and the Great Chamber. The single judge has the competence to declare a complaint inadmissible, when its inadmissibility is obvious, for instance, in our opinion: complaints that have no relation with the system of the Convention, abusive complaints – in the sense given to this notion by the Court's jurisprudence -, tardy complaints etc.

For the individual complaints that overcome this philtre, a new admissibility condition is introduced, i.e. the existence of an important damage. The content of this notion is not clear at the moment, and it probably will be set by the Court by jurisprudential way. A cornerstone for the shaping of the content of this notion could be the British and American jurisprudence in the matter, which established criteria of estimating the importance of litigation and frequently applied the principle *minimis non curat praetor* in order to avoid pronouncing themselves on litigations with derisory object.

In a certain form and in certain domains, the Court had applied this criterion even before the adoption of Protocol 14, for instance for art.8 and 10 of the Convention, which interests us, by examining the proportionality or seriousness of the sanctions imposed.

However, we expect that this criterion instituted by Protocol 14 should focus on new aspects, different from those used in the previous jurisprudence of the Court, which could allow an effective filtering of the complaints brought before the Court, otherwise the introduction of this criterion would be deprived of any efficiency.

Nevertheless, considering that the success of the protection mechanism instituted by the European Convention of Human Rights was mainly due to the fact that the Court of European contentious of human rights focused not only on the serious problems, but also on those which seemed banal or unimportant, art.12 of Protocol 14 stipulated also an exception from the application of the important damage criterion.

Consequently, it is stipulated that the Strasbourg Court will nevertheless judge on the essence of the matters even when, despite their apparent banality, "the complaints raise important issues regarding the application and interpretation of the Convention" or when "the internal courts of the state have not examined the situation of the claimant in an appropriate manner".[20]

[20] Extract from art.12 of Protocol no.14 to the European Convention of Human Rights, adopted on 1 June 2010.

Last but not least, an important amendment of the Convention stipulations is implied by the introduction the concept of "well-established jurisprudence of the European Court".

This amendment, correlated with that regarding the modifications of procedural order and those regarding the extension of the competencies of the Court Committees, stipulated that "a Committee may declare a complaint admissible and may solve its essence when the issue related to the interpretation or application of the Convention or its Protocols, which is at the origin of the case, constitutes the object of a well-established jurisprudence of the Court".[21]

The content of this concept is also likely to be set by jurisprudential way by the Court, but we consider that one may understand by this the existence of a number of decisions in a certain matter which solved certain issues brought before Court constantly, in the same sense, so that this set of decisions could justify the appreciation of "well-established (constant) jurisprudence of the Court".

In conclusion, we may say that the protection mechanism of the human rights on European level is heading towards a reform focused on the reduction of the time consecrated by the European Court to the inadmissible or repetitive complaints, with the granting of the due importance to the complaints that raise important issues.

It is likely that in its future jurisprudence in the application of Protocol no.14, the Court will interpret the new admissibility criteria introduced by this protocol, so that it might not affect the spirit of the protection system of human rights guaranteed by the Convention.

For instance, as regards the criterion of "importance of the damage" we expect that the jurisprudence of the Strasbourg Court should take into account, in interpreting this notion, first of all the criterion of reason for which a certain right was instituted and the criterion of importance and consequences incurred on the social level by the incriminated act, correlated with the determination of the form and degree of culpability of the defendant state and less the criterion of material value of the damage, which in most domains is irrelevant.

b) The European space of human rights between the Strasbourg Court of and the Luxembourg Court.

In the European space, the protection system instituted by the European Convention of Human Rights play the primary role in the matter of fundamental rights.

The European Convention was even considered by some doctrine-setters as being "a European Constitution in the field of freedom" [22] or a "Constitutional Chart for the Great Europe".[23]

The Council of Europe assumed since the beginning the task to create and protect a European legal order, by its protection system of human rights, in which a central role is played by the Convention and the EHR Court.

Moreover, the Strasbourg Court imposed itself the mission not only to protect the rights guaranteed by the Convention, but also their development, by adapting the Convention to the evolutions occurred in the European society by the dynamic and

[21] Extract of art.8 of Protocol no.14 to the European Convention of Human Rights, adopted on 1 June 2010.
[22] J. Velu, R. Ergec, „*La Convention Europeenne des Droit de l'Homme*", Bruxelles, Bruylant, 1990, p.35.
[23] Fr. Sudre, „*L'Europe des droit de l'homme. L'Europe et le droit*", Droit no.14, Paris, 1991, p.105.

evolutive interpretation form its jurisprudence, playing the part of a "true Constitutional Court".[24]

The Court, in fact, in its jurisprudence (decision of 23 March 1995 pronounced in the case Louzidou vs. Turkey), affirmed that the role of the Convention is to be a "constitutional instrument of European public order".

The role of the Strasbourg Court remains essential in the protection of human rights on European level, especially by the interpretation manner of the positive obligations of states on the basis of the Convention, which strengthens the protection standard, and by the extraordinary influence of its jurisprudence upon the internal law of the signatory states, there being numerous situations when the judgements ruled by the Court triggered substantial modifications in the internal legislation of certain signatory states of the Convention (Belgium – the legal situation of the children born outside the marriage, after the Marckx case -, Romania – constitutional and juridical regulation of preventive incarceration, after the Pantea case - , France – inheritance law, after the Mazurek case).

If we keep in mind, in this context, that part of the signatory states of the European Convention of Human Rights are also European Union member states, which has its own Court of Justice, the question occurs regarding the manner in which the European Union may be integrated into the protection system of human rights consolidated by the European Convention of Human Rights.

Consequently, we should approach the issue of the prospects in the evolution of the protection of fundamental rights also from the perspective of community legislation in the domain and the influence of the Strasbourg Court upon the Luxembourg Court and vice-versa.

We should remark that the fundamental rights in the EU community legislation have exhibited a tremendous evolution. The constitutive treaties of the Communities, in the beginning, did not mention the fundamental rights among the regulations they contained, and in a first stage the Court of Justice refused to exercise legality upon the EU community acts under the aspect of fundamental rights, guaranteed only by the constitutions of the member states, arguing that "it was not its task to assure the observance of internal rules, even constitutional, in vigour in one member state or another".[25]

Later on, the Court was obliged to adjust its approach, due to the reaction of some of the constitutional courts of member states, which considered they could control the constitutionality of the constitutive treaty and of community derived norms, under the aspect of the protection of fundamental rights, reversing thus, in the matter, the relation between EU community law and internal law.[26]

Thus, the Court of Justice had to assume the mission to solve in a Praetorian way the issues of the voids of the community system in the matter of human rights, and in the Nold case[27] it appreciated that measure cannot be taken that are incompatible with the fundamental rights recognised and protected by national constitutions, identifying as source

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[24] J-F. Flauss, „ *La Cour Europeenne des Droits de l'Homme est- elle une Cour Constitutionnelle*?", Revue francaise de droit constitutionnel no.36, Paris, 1999, p.711.

[25] C.J. E.C., decision of 4 February 1959 pronounced in the case Friedrich Stork & Cie. Vs the High Authority of C.E.C.A.

[26] See also:

The German Constitutional Court, decision of 29 May 1974 pronounced in the case Solange I.

The Italian Constitutional Court, decision of 27 December 1973, pronounced in the case Frontini.

[27] C.J. E.C., decision of May 1974 pronounced in the case C-4/73, Nold.

of these rights the international treaties regarding human rights to which the member states had adhered.

The Court of Justice went further in the Rutili case [28] and recognised the European Convention of Human Rights as reference norm in the matter of fundamental rights, and in the Hauer case[29] it granted pre-eminence to the Convention before other international treaties on human rights.

On the political level, the jurisprudential efforts of the Court have received conventional consecration in art. F par.2 of the Maastricht Treaty, which states that the "Union respects fundamental rights, as they are guaranteed by the ECHR and as they result from the common constitutional traditions of the member states". [30]

Later on, the Amsterdam Treaty[31] and the Nice Treaty[32] contained important dispositions related to the aspect of human rights, and then the Lisbon Treaty[33] recognised and integrated into the treaty the fundamental rights stipulated in the European Union's Chart of Fundamental Rights of 7 December 2000.

Despite these political and jurisprudential efforts, the European Convention and the jurisprudence of the Strasbourg Court are not integrated, from the juridical viewpoint, into the law of the Union, as the Luxembourg Court may grant the ECHR norms an autonomous interpretation and assure only a protection "*by ricochet*" of the rights, exclusively in the situation related to the application of the EU community law.

The solution for the existence of a unitary conception in the European space as regards the approach of the fundamental rights issue is a political one and is offered, on the one hand, by the Lisbon Treaty, and on the other hand by Protocol no.14 to the European Convention of Human Rights.

Thus, art.6 par.2 of the Lisbon Treaty stipulates the obligation of the European Union's adhesion to the European Convention of the defence of human rights and fundamental freedoms, without this adhesion involving the alteration of the Union's competencies, as they are defined in treaties.

This provision, we think, aimed at securing a double level of protection to the Union's citizens, who, if they are not successful as regarding the violation of their fundamental rights before the Luxembourg Court, may bring their case before the Strasbourg Court, invoking the stipulations of the Convention.

On the other hand, Protocol no.14 to the ECHR contains an express stipulation allowing the European Union to adhere to the Convention.

Consequently, the solution prefigured both by the Council of Europe and by the European Union, for the existence of a single space of fundamental rights on the European level, is the adhesion of the European Union to the Convention, and thus the Union's acts should become a subject of control for the Strasbourg Court, in the matter of fundamental rights.

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[28] C.J. E.C., decision of 28 October 1975 pronounced in the case Rutili.
[29] C.J. E.C.,., decision of 13 December 1979 pronounced in the case C-44/79 Lisolette Hauer/ Land Rheinland Pfalz.
[30] Extract of art.F par.2 of the Treaty of the Euoprean Union, adopted in Maastricht on 7 February 1992, come into force on 1 November 1993.
[31] The Amsterdam Treaty of modification of the Treaty of European Union was adopted on 2 October and came into force on 1 May 1999.
[32] The Nice Treaty was adopted on 26 February 2001 and came into fore on 1 February 2003.
[33] The Lisbon Treaty for the modification of the Treaty of the European Union and of the Treaty of instituting the European communities,, was adopted on 13 December 2007 and came into force on 1 December 2009.

This solution was prefigured by the European Court since 2005, since the ruling in the Bosphorus case (decision of 30 June 2005, pronounced in the case Bosphorus Airways vs. Ireland), in which the Court took a firm position in the problem of the status of community law *vis-à-vis* the European Convention, accepting its competencies to analyse the conformity with the Convention of a national implementation measure of a community law norm.

The adhesion of the European Union to the European Convention of Human Rights has both political and legal reasons, as well as reasons of practical nature.

The political significance of this decision would consist in the recognition of fundamental rights as "common value of European identity"[34] and in the firm expression of the member states' will to turn the European Union into a "lawful Union".[35]

The legal reasons consist mainly in avoiding the conflicts that could occur between the jurisdictions of the two Courts, the Strasbourg and the Luxembourg Court, in the elimination of ability in the protection of rights consecrated, on the one hand, by the HER Convention and on the other hand by the Chart of Fundamental Rights of European Union and the avoidance of uncertainty as regards the application of the Convention by the EU community judge and implicitly of the confusion of the national judge in the application of norms from both instruments.

The practical interest of adhesion is undoubtedly that of a reform in the sense of creating a higher coherence of the protection of fundamental rights in Europe.

We may conclude, through the prism of the aforementioned regulations and the jurisprudence of the two Courts, that there is an evident reforming trend to constitute a unified law of human rights on the European level, even if we shall have two courts and two Conventions in the matter.

Moreover, after the adoption of the Lisbon Treaty, there is the tendency to develop the issues of fundamental rights in the European space, along several levels: the level of national law, the EU level and the ECHR level of protection of fundamental rights, with the consideration of the relations ECHR. – internal law, EU – internal law and the creation of an ECHR – EU – internal law axis.

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[34] C. Duparc, „*La Communaute europeenne et les droits de l'homme*", Com. Communautes europ.,1992, p.20.
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