

THE ROLE OF THE COUNCIL OF THE EUROPEAN UNION WITHIN THE HUMAN RIGHTS PROTECTION SYSTEM

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Abstract

The objective of this paper is to approach the Council of the European Union from a less explored perspective at the doctrinal level, emphasizing its competences in the field of human rights and its role within the system of human rights protection. By structuring the material in three sections, we aim to respond to the concerns born from the desire to explore the institution and from this perspective. In this sense, the methodological foundation of the study is the theory of knowledge, we will take into account the doctrinal, normative and official sources made available by this institution, which will be complemented by the logical analysis, as well as the comparative analysis method. The results of the research bring a real contribution to the deeper knowledge of the Council of the European Union and its role within the human rights protection system at the Union level, as well as application value, but and an informative support for all those interested in this issue.

Keywords: *EU Council, human rights, EU, protection, decision, regulation*

1. Preliminaries

The introductory section of the study presents the UE institutions with a significant contribution in the field of human rights, emphasizing their powers within the Union's protection system, the following two sections we will allocate to the Council of the European Union and its role in this field.

The European Union has in its composition 5 institutions with express powers regarding the protection of human rights, namely the European Parliament, the European Ombudsman, the Court of Justice of the European Union, the Council of the European Union and the Agency for Fundamental Rights in the European Union. Along with them, the European Council and the European Commission intervene in the protection and promotion of human rights, in accordance with the provisions of the European Union treaties.

The European Parliament is the body that expresses the democratic dimension of the European Union, has its headquarters at Strasbourg, France, being made up of 705 members, European parliamentarians elected by the citizens of the European Union,

respectively each member state elects its representatives in the union parliamentary assembly.[1]

The institution pursues the protection and promotion of human rights in the European Union through *petitions* addressed by EU citizens, as well as through the activity of its *permanent committees that prepare the works of plenary sessions*, namely the Committee for Legal Affairs, the Subcommittee for Human Rights, the Committee for Culture and Education, the Committee for women's rights and gender equality.[2]

The European Ombudsman is appointed by the European Parliament, has its headquarters at Strasbourg, France, being an independent person in the performance of his function, for a five year mandate. [3]

Its competence is provided for in the Statute established by the European Parliament, with the opinion of the European Commission and with the approval of the Council of the Union, and consists in examining cases of maladministration in the activity of Union institutions or bodies, with the exception of jurisdictional ones.[4]

Thus, the ombudsman can be notified through a complaint or can be notified *ex officio*, following the notification he will carry out an *investigation*, the conclusions of which will be contained in an *annual report*, to be submitted to the European Parliament for information. [5]

The Court of Justice of the European Union has its headquarters at Luxembourg, France, being an institution that, through its jurisprudence, developed and established over time, has played a particularly important role in terms of the protection of human rights in the Union space, covering gaps in conventional texts, *setting forth principles and institutions* in a Praetorian manner.[6]

At the beginning, the Court of Justice of the European Union showed that it respects the fundamental rights and that it ensures the defense of these rights because they are recognized and guaranteed by the constitutions of the member states and are part of the general principles of law. Later, he started referring to other instruments for their protection, especially to C.E.D.O.[7]

In the member states of the European Union, there is a double protection of human rights. The first protection is carried out at the national level and is ensured by the Constitutional Court, the supreme court and the other courts, and the second is carried

out at the European level through the European Court of Human Rights and the Court of Justice of the European Union.[8]

The Agency for Fundamental Rights in the European Union is an institution established in 2007, with headquarters at Vienna, Austria [9], legal successor of the European Observatory on Racist and Xenophobic Phenomena, was established with the aim of providing the competent institutions, bodies, bodies and agencies of the European Union, as well as the Member States, with assistance in matters of fundamental rights, to support them in full compliance of them when the Union law is applied, when they fulfill their competencies.[10]

Thus, it has been assigned broader powers than the predecessor institution, the main task being the collection and publication of relevant, objective, reliable and comparable information and data regarding the situation of fundamental rights in all member countries of the European Union within the scope of Union legislation, as well as promoting dialogue with civil society for to raise public awareness of fundamental rights and disseminate their work.[11]

2. The involvement of the Council of the European Union in the protection of human rights

The Council of the European Union, also known as the Council of Ministers or the Council, is the main European decision-making body that adopts legislative acts and coordinates European policies.[12]

The headquarters are in Brussels, Belgium, but in April, June and October, the Council meets in Luxembourg. In exceptional situations, with unanimity of votes, it can be established that the meetings of the Council take place elsewhere.[13]

It should not be confused with the Council of Europe, which is an international organization with a political character, but neither with the European Council. The EU Council represents the „voice of the member states”, but it should not be confused with the Representatives of the governments of the member states gathered within the Council, who act as a ministerial conference and their decisions materialize by concluding international conventions that are practically required by the founding treaties, being a

forum whose meeting takes place whenever the primary law provides for this or when the member states consider it is appropriate.[14]

The Council of the European Union contributes to the respect of human rights through its possibility to use a mechanism to guarantee the respect of human rights, having 2 competences in the matter, namely *the preventive* competence and *the repressive* competence.[15]

Under the preventive aspect, the EU Council can address *appropriate recommendations* to the state in question, in the situation where it is established that there is a clear risk of a serious violation by it of the principle of respect for human rights, and *in a repressive aspect*, based on the decision of the EU Council approved by the European Parliament, can establish the existence of a serious and persistent violation of human rights by the state in question and *suspend the exercise by it of certain rights* deriving from the Union treaties, including the right to vote.[16]

The justification for this mechanism comes from the fact that the Treaty of Lisbon reconfirms the importance of human rights in the European Union, providing that respect for human rights is not only a condition of belonging to the Union, but also represents one of its foundations, so the adoption of the Charter of Fundamental Rights at the level of the European Union, represents one of the most important reference documents in the field of protection and guarantee of human rights in the European Union [17], to which are added a series of regulations and directives of the European Union.[18]

The EU's key decision-maker, the Council ensures that fundamental rights are taken into account when drafting EU legislation and actions. It also acts to promote human rights in relations with third countries and international institutions, as well as during the negotiation of international agreements.[19]

„The defense of fundamental rights is a horizontal issue, affecting all areas of EU activity, which means that fundamental rights must be taken into account by all Council bodies in their work, regardless of their level or the topics they address. In addition, there is a specialized body dealing with all matters directly related to fundamental rights: *the Working Group on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP)*”.[20]

„It deals with matters related to *the Charter of Fundamental Rights of the European Union* and negotiations on the EU's accession to *the European Convention on Human Rights*. [21]. Also, the working group is responsible for: the preparatory works within the legislative procedures of the Council in the field of *fundamental rights, citizens' rights and free movement of persons*, all aspects regarding fundamental rights in the European Union, as well as their promotion and monitoring reports, the annual report on the activities of *the Agency for Fundamental Rights*, as well as the annual exchange of views”.[22]

In terms of respect for human rights outside the EU, all Council bodies dealing with external affairs must incorporate human rights into their activities. In addition, the promotion of human rights is certainly a priority in itself, from this point of view the action plan on human rights and democracy, adopted on November 18, 2020 for the period 2020-2024, is considered as a reference in this field.[23]

„Through this action plan, the Council reaffirms the EU's firm commitment to further promote universal values for the benefit of all. No one should be left behind and no human right should be ignored. To this end, the EU and its Member States [24] will use the full range of instruments at their disposal, in all areas of external action, to maintain and strengthen the EU's global leadership in human rights and democracy and in implementation of the EU action plan”.[25]

„Among the main aspects of the Council's activity regarding fundamental rights we mention: establishing EU priorities within the UN forums charged with the defense of human rights, adopting thematic guidelines to support the EU's external action, initiating dialogues on human rights with third countries, adopting the annual report on human rights man and democracy”.[26]

Continuing the scope of human rights concerns, „on 26 February 2024, the EU Council appointed Olof Skoog as the EU Special Representative (EUSR) for human rights, replacing Eamon Gilmore, whose five-year mandate expires ends on 29 February, with Mr Skoog taking up his duties on 1 March 2024 for an initial period of two years. Thus, the new EU Special Representative will continue the work of his predecessors in contributing to the implementation of EU human rights policy, EU positions on promoting respect for international humanitarian law and supporting international criminal justice.

In addition, he will contribute to establishing a stronger European voice through human rights dialogues with third country governments and international and regional organisations, as well as with civil society organizations and other relevant actors. The Special Representative will work closely with the European External Action Service and the EU institutions to ensure the effectiveness and visibility of EU human rights policy in external actions.”[27]

On 27 May 2024, „in order to maximize the synergy between the action plan and the thematic and geographical programmes, this Action Plan on Human Rights and Democracy 2020-2024, extends its work until 2027, thus aligning it with the full cycle of the financial framework multiannual 2021-2027”. [28]

In further implementation of the action plan, among other objectives, „the EU will continue to strongly denounce human rights violations and abuses against human rights, violations of international humanitarian law, attacks against democracy, including repression of civic space and independent media. The EU will also step up its efforts to promote a positive discourse that emphasizes the multiple benefits that the promotion of human rights and democracy brings to all stakeholders in support of sustainable development, peace and security and the promotion of equal, diverse, pluralistic and favorable to inclusion”. [29]

3. Aspects regarding the legislative activity of the EU Council in the human rights field

„On 7 December 2020, the Council of the European Union adopted a *decision and regulation establishing a global human rights sanctions regime*. Thus, for the first time, the EU will be able to target individuals, entities and bodies responsible for serious human rights violations and abuses against them, involved in or associated with such violations or abuses, worldwide, regardless of where they occurred. The framework for specific restrictive measures applies to acts such as genocide, crimes against humanity and other serious violations of or abuses of human rights”. [30]

Therefore, the elaboration and presentation of the list of natural and legal persons, entities and bodies responsible [31] constitutes a new element in the activity of the Council, which reinforces the concern of its institutions to guarantee respect for human

rights worldwide. As regards the application of international sanctions in this field, the competent authorities have been designated at the level of each EU member state.[32]

For Romania, the competent authorities are: the National Fiscal Administration Agency (Ministry of Public Finance), the National Bank of Romania, the Financial Supervision Authority, the National Office for the Prevention and Combating of Money Laundering, the Directorate of Commercial Policies - the Department of Foreign Trade (Ministry of Entrepreneurship and Tourism), the Romanian Customs Authority, the Ministry of Foreign Affairs, through the Department for Export Control, the Ministry of National Defense, the General Inspectorate of the Border Police (Ministry of Internal Affairs), the National Visa Center (Ministry of Foreign Affairs), the Ministry of Transport.[33]

For the Council, the year 2024 is a reference year in terms of legislative activity regarding the matter of human rights violations at the Union level.[34] Under this aspect, we note some of the reference topics: the updating of the EU guidelines on children and armed conflicts in the context of the increase in the number of violations of children's rights in the situation of armed conflicts [35], the adoption of sanctions targeting extremist settlers and violent activists in Israel in the context of conflicts of Gaza [36], adopting additional sanctions targeting entities and individuals responsible for serious human rights violations worldwide, including torture and systematic and widespread acts of sexual and gender-based violence [37].

4. Conclusions:

The field of human rights protection at the level of the European Union is an always current topic, the vast activity of the Union institutions in this matter becomes a permanent concern for the thorough research of their role in the issue of human rights.

Through this study, I have emphasized the competencies and role of the EU Council in the field of human rights, the involvement of its own institutions in the policy of protection of human rights at the level of the European Union, but also outside it, as well as the legislative activity in the matter.

From the research carried I have shown that the institution of the Council of the European Union, approached from a perspective modestly analyzed in doctrine, fulfills a

significant role in the issue of human rights at the Union level, through the prism of the two competences in the matter, having a *preventive role*, in the sense that can address appropriate recommendations to the state in question, in the situation where it is established that there is a clear risk of a serious violation by it of the principle of respect for human rights, and a *repressive role*, based on the decision of the EU Council approved by the European Parliament, a situation in which it can establish the existence of a serious and persistent violation of human rights by the state in question and suspend its exercise of certain rights deriving from the Union treaties, including the right to vote. In addition, the adoption in 2020 of the two normative acts, *the decision and the regulation establishing a global regime of sanctions in the field of human rights, the extension of the action plan on human rights and democracy until 2027, as well as the update of the EU guidelines in this field*, strengthens the role of this institution in promoting mechanisms to guarantee respect for human rights worldwide, widening the scope powers assigned to the Council of the European Union in the field of human rights.

References:

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- [4] Idem.
- [5] Idem.
- [6] https://curia.europa.eu/jcms/jcms/Jo2_7024/ro/, accessed at 02.11.2024.
- [7] Ion Diaconu, *Protecția drepturilor omului în cadrul Uniunii Europene*, Romanian Community Law Review no. 1/2009, p.56-57;
- [8] The protection of human rights is primarily carried out at the national level, with states agreeing to create some international protection systems, thus assuming responsibility towards the international community for respecting fundamental human rights and freedoms. For more details see Ana-Daniela Bobaru, *Rolul Curții de Justiție a Uniunii Europene în procesul de interpretare și aplicare uniformă a dreptului Uniunii Europene*, University Publishing House, Bucharest, 2011, p.112-130.
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- [10] https://www.utgjiu.ro/revista/jur/pdf/2019-04/10_ANA_DANIELA_BOBARU.pdf, accessed at 02.11.2024.
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- [17] Ibidem, p. 302.
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