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CONTENT

INTRODUCTION

The European Union has based its identity upon fundamental rights and principles stated in the Universal Declaration of Human Rights. In its internal politcies, the EU has gone beyond the international human rights regime. However, the area of the foreign policy and external relations has been established and developed later and thus the behavior and application of its internal human rights provisions is several steps behind. This proceedings covers various areas of EU policies including but not limited to migration, security and defence policy and gender equality, their state of art using a combination of legal, political and institutional perspective.

Papers in the text-book provide different and application-practice oriented view to the EU foreign policy, including recent issues of migration, security and defence policy, education and general application principles of EU foreign policy. All of them are connected also with the generally accepted sustainable development goals.

Please use this textbook as the relevant source of information, study material and individual expertise view based on the outcomes of particular research. We hope you will consider it as relevant piece of academic literature.

Editor

EU - TURKEY DEAL ON MIGRATION: PROSPECTS AND CHALLENGES

Mgr. Eduard Csudai

Abstract

The article is constituted by three main sections, which will make a closer look at the EU Turkey deal from 18 March 2016. The first section of the article will provide legal review of issued provisions by the EU in the area of migration and refugees. I want to emphasize, that the EU law on migration is formally very strict, especially for those who are seeking for new labour opportunities. I will link the legal prospects on migration (and refugee law as well) in the EU with the agreed provisions of the deal. Cooperation (historical and present) between the two counterparts will be the topic of the article´s second section. I will mention the first contacts between the EU and Turkey and the article will analyse the EU´s external policy towards Turkey from 1963 (the first formal agreement between the EU and Turkey) until the latest deal. In the third section, I will demonstrate the most important agreed points in the joint statement regarding statistics from several important sources and I will compare the statements on the current results of European Commission on one side and non-governmental organisations such as Amnesty International and Human Rights Watch.

Key words: EU, Turkey, migration, refugees, joint statement

Introduction

The enormous migration flow to the European Union in 2014 and 2015 represented a huge issue to the EU´s internal and external policy-making. The rise of hate speech and anti-migration were reflected in many Parliaments of the EU Member states, for instance in Austria, Slovakia, Hungary, and Germany. EU faced also well-prepared media attacks from external borders – Russia that compared the EU to a

woman, for instance, the cases of migrants are raping women and girls and the ignorance of this issue by the EU. These and many other circumstances caused the change of the policy-making of the EU in the area of migration in recent years. However, the legal notion - EU migration policy, is very strict on paper. The issues started to occur in mentioned years 2014 and 2015 when the EU law in the mentioned area started to challenge the real migration flows across the European borders.

18 March 2016 is the date when the EU and Turkey made a common joint statement on migration flow to Europe. The counterparts agreed on several provisions on stopping and reducing the migration flow into Europe through Greece from Turkey. Turkey had to receive financial dotation by 3 billion euros until the end of 2017 and another 3 billion euros until the end of 2018 and better travel conditions in the EU for its citizens. Turkey had to build up detention centres, train the coastguards and halt the migration to EU. The renewed talks for the acceptance of Turkey to the EU as a member state were an important agreed provision.

It seems the deal (I do not consider it as an agreement with legal lenses) has several issues after a year and a half – legal, political and in the area of human rights as well. The recent situation needs a concrete answer to the question why is then the EU overlooking Turkey´s behaviour and internal policy-making regarding the fulfilment of the deal?

The identity dimension of EU – Turkey relations in the past and in this concrete joint statement is a significant area for research through cultural approaches and institutionalism. The article will come out with recent data concerning the deal, "violations" from both of the sides, reflection on the unusual policy-making by EU and Turkey and Turkey´s history on migration as a model for comparison with recent development in this area.

Methodology

With the knowledge of the mentioned dealt provisions between EU and Turkey, I raised the question why is the EU accepting and overlooking the Turkey´s third country status, its internal policy-making (I will mention several serious issues in this field) and it's (in some provisions) discriminatory legal system?

The hypothesis regarding the question is that the EU clearly accepts smaller or not very important legal derogations by itself and Turkey, because of its previous own prevention hit the lowest level of understanding by its member states and external competitors.

By legal expository research of EU migration law and the Convention on Refugees from 1951, I will analyze whether and how are the provisions of the agreed deal and current Turkish law in legal accordance with the relevant EU and UN law.

I mentioned that EU promised Turkey in the deal the renewal of acceptation process to the EU as a member state if Turkey will fulfil the deal. However, the deal has two counterparts and it is mostly requiring Turkey to act with the cooperation of the EU. I will use the cultural approach regarding this joint statement to see how EU evaluates the Turkey action in the deal.

Nevertheless, on the other side, Turkey is not fulfilling the deal perfectly and there are still doubts if it is a safe third country. I will mention with using the fundamental legal research on how Turkey´s courts decided regarding refugees in one well-known case from 2009 and the decision-making by the Greece Asylum Appeals Committees.

1 Current EU policy on Regular and Irregular Migration

1. 1 The EU Directives regarding the migration

For better understanding, how EU was dealing before the migration crisis with fewer, mostly economic migrants, I introduce the current EU policy in this field.

The year 2003 was crucial for the status of third-country nationals, who are considered as long-term residents. This is the year when the Council of Ministers adopted the Directive 2003/190/EC regarding migration issue. The denizen is a term introduced by Thomas Hammar – denizens are persons who came to Western and Northern Europe in the 1960s and 1970s to find temporary employment or, in order to find protection, but these persons remained residents in countries of immigration for another 10 or 20 years (Anneliese Baldaccini, Elspeth Guild, Helen Toner, 2007, p. 429). Kees Groennendijk considers these persons as aliens and not as citizens in the social and political perspective, their status had acquired a status approach, that of a citizen of their country or residence (Anneliese Baldaccini, Elspeth Guild, Helen Toner, 2007, p. 179). There were living more than 10 years nearly 6.7 million people in Germany in 2005.

In the early 1990s, the European Court of Justice started decision-making by turning the provisions of Decision 1/80 of the EU-Turkey Association Council with other clauses in the Association Agreement with Turkey resulting from the soft law, which was neglected by lawyers, national authorities and courts, into a set of rules granting a privileged status. (Anneliese Baldaccini, Elspeth Guild, Helen Toner, 2007, p- 431). Turks are the third largest group of third-country nationals in the EU. Their status changed from third-country nationals somewhere very close to the EU citizens. This was caused by the ECJ´s

decision making in cases such *Nazli*[1], *Cetinkaya*[2], *Dör and Ünal,* and *Torun*[3].

Directive 2003/109/EC had three aims in mind:

- Creation of new status for long-term residents as third-country nationals
- Determination of the first Member State rights (to secure equal treatment with residential countries nationals)
- Respect and to ensure freedom of movement within the EU under certain conditions[4]

Conclusions of the Tampere Presidency accepted the plan for ensuring the fair treatment of third country nationals, who reside legally on the territory of its Member States. The conclusions required more vigorous integration policy from the EU and as result with individual rights and obligations comparable to the EU citizens.[5]

If we take aim to the EU´s efforts on how to build a process regarding achieving third-country nationals' status who are long-term residents, we can see in the articles 4 to 6 of the Directive[6] that for persons coming from third countries into the EU is the process lasting too long. Nevertheless, regarding the official provisions: five years of lawful residence in the Member State with filled application, regular and stable

[1] The decision available online: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-340/97
[2] The decision available online: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-467/02
[3] The decision available online: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-502/04
[4] Article 1 of the Directive 2003/109/EC available online: http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32003L0109
[5] Section III, Art. 18, Available online: http://www.europarl.europa.eu/summits/tam_en.htm
[6] The decision available online: http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32003L0109

income of the family without recourse to public assistance and health insurance, there are two further grounds for refusal – the public policy and public security and compliance with integration conditions in accordance with national law. The status granted by the Member state is binding to other member states unless the authorities of the member state were manifestly and seriously wrong in issuing the residence permit (Anneliese Baldaccini, Elspeth Guild, Helen Toner, 2007, p. 435).

In the cases, if a member state grants a status of third-country national, there is an issue relating to the other Member States because these states are not obliged to accept the free movement of holders of such status.[7]

Regarding the EU Turkey deal on migration from 2016, we can see that persons, who are moving irregularly to the EU across the Greece islands, cannot achieve this status because they have to be sent back to Turkey. Even if the migrants' wouldn´t be regular, they have to take into consideration the long-term process of being a third country national. Regardless of this, all new irregular migrants have to be sent back to Turkey.

If there is any chance to become a "regular" migrant, this person has to be treated under the Directive. There is no definition of this term, but I consider an irregular migrant as a person, whose *"movement is out of regulatory norms of sending, transit and receiving countries. This person doesn't provide in the countries of his destination documents for his authorization under the immigration regulations. These persons don't provide any passports or travel documents or cannot fulfil the administrative provisions to leave his country."* (International Organisation on Migration, 2004, p. 34).

Therefore, all irregular migrants have to be treated under different European Council´s Directive 2002/90/EC of 28 November 2002

[7] The decision available online : http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32003L0109

defining the facilitation of unauthorized entry, transit, and residence. This Directive is in the first paragraph combating the irregular migration. The EU Turkey deal settled in provision 1 the concrete content of the matter: *„All irregular migrants crossing from Turkey into the Greek islands as from 20 March 2016 will be returned to Turkey."*[8] This means that every person without a document which provides this person´s status as a migrant will be sent back to Turkey with accordance to the Directive 2002/90/EC, otherwise, the regular migrants and persons who can be accepted as migrants in EU´s member states will be treated under the Directive 2003/109 EC. This mass of people can be fulfilled with asylum seekers as well who have to be treated under the UN 1951 Refugee Convention and Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for an uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

When we consider that the huge migration in 2014 and 2015 certainly caused legal problems with dividing the migrants to regular or irregular and to recognize who are asylum seekers, the deal between EU and Turkey was very simplified. The provision of sending back all irregular migrants does not mention those, who are regular migrants or asylum seekers.

2 EU Turkey – first contacts on migration with Europe

Economic modernization, intensive urbanization and rural-urban migration triggered new problems around the settlement and employment of internal and external migrants (AKSEL, Turkish Migration Policies: A Critical Historical Retrospective, p. 172). The first big migration boom within Turkey started in the 1950s when the migration started and was based on labour substance to Europe and

[8] Available online: http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/

more industrialized countries and it was not constituted in the area of nationality or belief. For instance in 1950s migration affected Turkish, Muslims and non-Muslims together for new labour opportunities and mostly in Western Europe or more industrialized countries (İçduygu A., 2002, p. 88). The mentioned migration boom was affected also legally, for instance with the ratification of 1951 UN Convention on the Rights of Refugees. Turkey ratified this Convention in 1962.

From 1950 till 1980 the number of non-Muslims reduced in Turkey from 225 000 to less than 150 000 (Icduygu, 2008). One of the reasons that occurred are the events from 6-7 September 1955 – violence against the non-Muslim population and the second is the displacement of Rum population from Istanbul after 1963 and 1964 crisis and the increase of violence against minorities. The 30 years between 1950 and 1980 I, therefore, consider mostly as a time period of emigration from Turkey (AKSEL, Turkish Migration Policies: A Critical Historical Retrospective, 2013, p. 173).

Consequently to this situation in the late 50s and in the beginning of 60s of the 20th century Turkey made its first attempt to associate the membership with the European Community. The Ankara Agreement sought to integrate Turkey into a customs union with the European Economic Community whilst acknowledging the final goal of the membership (House of Commons, 2008, p. 50). The main aim of the agreement was established in the Article 2 of the Agreement: *"The aim of this Agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Parties, while taking full account of the need to ensure an accelerated development of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people."*[9]

[9] Available online: http://trade.ec.europa.eu/doclib/docs/2003/december/tradoc_115266.pdf

2.1. New modes of migration policy in Turkey after the year 2000

The challenges of new migration modes transition and it's governance have to be viewed by everyone within the context of a nation-state and international migration dilemma. Turkey is known as a country of substantial emigration for decades. The challenges to which Turkey faced in the 2000s changed the country's traditional immigration policy by nation building concerns, as well as by efforts to sustain a homogenous national identity (AKSEL, Turkish Migration Policies: A Critical Historical Retrospective, 2013, p. 178).

Keyman and Içduygu demonstrate the impact of globalization in the case of Turkey and also point out the specific developments within Turkey as a country which transformed to transition country for migration. Turkey´s market changed to the liberal character what is also another great factor which is attracting people to migrate to Turkey. The current ambition of Turkey to be accepted as a member of the EU and the important political liberalization is altering the state's traditional conception of national identity (Fuat Keyman, Ahmet İçduygu, 2000, p. 383-398).

Empirical evidence within the years 1995-2013 directly and indirectly shows the volume and nature of the new immigration flow to Turkey. In these two decades is estimated that there were more than half a million transit migrants apprehended in the country. The migrants came primarily from the Middle Eastern, Asian and African countries, trying to make their way to Europe (AKSEL, Turkish Migration Policies: A Critical Historical Retrospective, 2013, p. 179).

2.2. Conclusion of the Second Section

I want to emphasize, that the changing historical and economic circumstances changed the migration in Turkey. In the beginning of the 20th century, when the Ottoman Empire was succeeded by the Turkish state, the people were migrating from Turkey mostly because of religion (mostly non-Muslims) and Muslim people visited Turkey. As I

mentioned above, later in the 1980s became Turkey a destination state for any kind of religious migrants. Turkish emigration to Europe continued after the end of labour recruitment through family reunification in the 1980s and most of the 1990s.

In 2017, the situation in Turkey is quite different. Turkey became the largest refugee host country in the world with more than 3.4 million refugees. The European Commission reported about the placement of more than 45 humanitarian projects with 19 humanitarian organizations working together with Turkish partner organizations to provide support for refugees.[10] Refugees living in Turkey are from many nationalities, for instance, Syrians, Afghans, Iraqi, Somalians, and Iranians etc.

This long-term cooperation on the migration of the EU with Turkey from the 1960s continues with the EU Turkey deal from 2016.

After the first analysis of Turkey´s previous experiences with migration in its history, I can assume that the most recent EU Turkey deal has not a very significant pattern with the first agreements between Turkey and western European countries. The newest EU Turkey deal is for Turkey a completely new challenge with un-expectable outcomes. The main reasons why I consider there is no similarity with the past events as our argument are:

- It is not an economic and labour migration as in the 1950s when it was based on labour substance to Europe and more industrialized countries,

- The EU Turkey deal on migration is not based on religion or belief, as it was from 1950 until the 1980s when the number of non-Muslims reduced

[10] Available online: http://ec.europa.eu/echo/files/aid/countries/factsheets/turkey_syrian_crisis_en.pdf

- Turkey was in 1995-2013 considered as transit country, while the newest deal on migration settled Turkey as country for detaining the people who are legally not eligible to be in the EU

The conclusion of a historical analysis of Turkey´s migration policy provides a result in which we can see that Turkey did not face a situation in which it helped the EU to stop immigration.

However, the Turkish attacks against minorities such as Kurds or non-Muslim population make some concerns about the presumption whether Turkey is, or it is not a safe-third country. In addition, not at least, the internal conflict with Kurdish population can threat the people halted under the EU Turkey deal from March 2016.

Nevertheless, this joint statement will have a result which will set a new precedence on how Turkey acted. If there will be clear violations of the deal by Turkey, EU can easily politically blame Turkey for its lack of reducing of the migration flow. EU is in recent years fighting on different fronts and statistical halt of migration is still eligible for calming down the critics from its external borders and within its member states as well.

3 The EU Turkey deal – 18 March 2016

In the beginning of this section, I want to provide what was agreed between the representatives of the EU and the Turkish counterpart. The deal or the joint statement is not an agreement from the legal point of view. The first question which I was asking was, if there are there no sanctions in the joint statement and if one of the sides won´t fulfil it. The article is showing the data until the end of December 2017 by statistics from European Commission and non-governmental organizations such as Amnesty International and Human Rights Watch and Eurostat as well.

This third part will mention the doctrinal analysis of legal documents, such as Turkey´s migration policy (LFIP – Turkish Act on migration),

the EU Directives concerning migration, immigration as well as refugees and the Turkish obligation to the UN 1951 Refugee Convention.

3.1 The Joint Statement of the EU and Turkey on Migration (18 March 2016)

In the beginning of this section, I want to cite the Council of Europe´s press release regarding this issue: *"Turkey and the European Union reconfirmed their commitment to the implementation of their joint action plan activated on 29 November 2015. Much progress has been achieved already, including Turkey's opening of its labour market to Syrians under temporary protection, the introduction of new visa requirements for Syrians and other nationalities, stepped up security efforts by the Turkish coast guard and police and enhanced information sharing. Moreover, the European Union has begun disbursing the 3 billion euro of the Facility for Refugees in Turkey for concrete projects and work has advanced on visa liberalization and in the accession talks, including the opening of Chapter 17 last December. On 7 March 2016, Turkey furthermore agreed to accept the rapid return of all migrants not in need of international protection crossing from Turkey into Greece and to take back all irregular migrants intercepted in Turkish waters. Turkey and the EU also agreed to continue stepping up measures against migrant smugglers and welcomed the establishment of the NATO activity on the Aegean Sea. At the same time, Turkey and the EU recognize that further, swift and determined efforts are needed"* (Union, 2016).

3.2 The Legal issues of the "Deal"

- First, irregular migrant cannot be a refugee who is under the protection of UN Convention on Refugees and the Procedure Directive 2013/32/EU. An irregular migrant can be, therefore, only a person who is not a refugee and, as I mentioned in the first section, a person who doesn't has legal documents providing authorization. The statement is therefore restricted

only to migrants, who are changing their living conditions, not because of war or life threats in their country or are not assumed as "regular". Persons, who are coming from the sea (only people intercepted in Turkish waters can be sent back to Turkey) or from other roots, are also not a part of the deal. This seems to a very difficult and long process for dividing the coming people to Greece to regular migrants, irregular migrants and refugees/asylum seekers.

- The second important agreed provision regarding Syrians says that for every Syrian being resettled to Turkey from Greece, another Syrian will be resettled from Turkey to the EU prioritizing those migrants who have to not previously enter or tried to enter the EU irregularly. Turkey will also take any necessary measures to prevent new irregular arrivals on Greek islands and will corporate with EU to this end.

- The diplomats agreed also that the EU Member States will speed up the ensuring process of the visa liberalization roadmap to lift the visa requirements for Turkish citizens.

- Another important aspect is money, which has to be quickly sent as the payment of 3 billion Euros to Turkey under the Facility for Refugees until the end of 2017 and another 3 billion euros until the end of 2018 (Giuffre, 2017).

3.2.1 EU Law Regarding the Issue

The EU law currently allows returns only under two circumstances:

- Migrants, who cannot apply or cannot qualify for asylum are considered as "irregular migrants" and are eligible to be

returned to Turkey under an existing readmission agreement with Greece[11].

- Persons, who submit asylum claims but are determined to have arrived from a country where they had or could, have claimed protection.[12] Whether Turkey is a safe country, as it has been under the deal, remains in question (Collett, 2016).

The joint statement made an agreement on providing for the rapid return of all migrants, not in need of international protection crossing from Turkey to Greece and to take back all irregular migrants intercepted in Turkish waters. The migrants arriving in Greece will be duly registered and their asylum applications processed in accordance with the Procedures Directive 2013/32/EU on common procedures for granting and withdrawing international protection (recast).[13]

The Procedures Directive 2013/32/EU in Article 2 Definitions states who can apply for protection in the European Union: *"application for international protection' or 'application' means a request made by a third - country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection outside the scope of Directive 2011/95/EU, that can be applied for separately"*[14].

The Greek Parliament issued an amendment to its asylum law (L 4375/2016), which modifies the composition of Appeals Committees after several Greece Appeal Committees decisions rebutted the safe third country presumption regarding Turkey. The amendment, for

[11] Pending the implementation in June 2016 of a readmission agreement between the European Union and Turkey

[12] A "safe third country" or "first country of asylum," the EU criteria for which include the right to *non-refoulement* and the ability to both request *and* receive protection) are considered inadmissible to the European Union and eligible for return

[13] Available online: http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/

[14] Article 2 Paragraph (b) of Council Directive 2013/32/EU

instance, sets out the necessary legal provisions to apply the concepts of safe third country and safe first country of asylum. It ensures fast-track procedures, including appeal procedures, for the assessment of asylum applications (Giuffre, 2017).

It is questionable whether Greece can solve the individual examination of all asylum claims. Individual assessment of asylum request including the right to lodge an appeal before the court takes a long period of time (Chetail, 2016). Another aspect is the detention of migrants in Greece´s centres, which are regarding the reports of several NGOs in very bad conditions.

The 1:1 ratio of Syrian´s resettlement is discriminatory on the ground of citizenship. Afghani, Iraqis, Iranians etc. are not part of the deal and cannot apply for asylum as refugees by this deal as well. Different treatment is permissible if the distinction is made pursuant to a legitimate aim. The distinction has an objective justification, and reasonable proportionality exists between the means employed and the aims sought to realize (Alexander Aleinikoff, Vincent Chetail, 2003, p. 172). The joint statement is not clear in the legitimate aim – it is a fact, that Turkey hosts more than 3.4 million Syrians and they can be, for instance, privileged because of the high number of them, but on the other side, the joint statement doesn´t provide any reasonable statement, why are different citizens or nationals treated differently.

3.2.2 Is Turkey a safe third country?

Turkey adopted a law and made specific assurances to guarantee that Syrian nationals returned to Turkey may request and be granted temporary protection on 6 April 2016. Turkey´s geographical limitation to the 1951 Refugee Convention makes unrealistic any possibility to request and receive refugee protection for those coming from non-European countries. In fact, only Europeans can apply for asylum and this cut´s completely the changes of irregular migrants for asylum claim assessment in Turkey. This means that Turkey is internationally not obliged to treat refugees who are not citizens of Europe, in accordance

with the Geneva Convention, as required by Article 38 of the Asylum Procedures Directive to be considered as a safe country (Chetail, 2016).

Turkey must obey the principle of *non-refoulement.* No person may be returned to a country where he can face persecution. Regardless to the geographic limitation of the UN Convention on Refugees (Giuffre, 2017). Nevertheless, the mentioned group of people can only obtain a conditional refugee status based on the Turkish Law on Foreigners and International Protection. The issue is that conditional status of a refugee is a fragile legal protection for those, who really need the protection of the principle of non-refoulement. This act came into effect in 2014.

The Syrian refugees and asylum seekers are removed from European Union (Greece and its islands) to Turkey instead with the presumption that Turkey implemented a temporary protection regime. This means that all Syrians are automatically entitled to protection without going through a full asylum application process.

Relevant NGOs, such as Human Rights Watch and Amnesty International denounced in late 2015 the increase in push-backs, deportations, psychical violence and arbitrary detention aimed against the asylum-seekers Iraq or Syria. The safety of a third country has to be assessed on an individual case-by-case basis, Turkey is not fulfilling most of the conditions required by international and EU law (Chetail, 2016).

3.3 Case law on applying for asylum in Turkey

Very concerning is the case of Abdolkhani and Karimnia v Turkey from 2009 about Turkey´s treatment with asylum seekers. Both are nationals of Iran and were until 2006 members of People´s Mojahedin Organisation in Iran. UNHCR recognised them as refugees in 2007 on the basis of their political opinions. Mr Abdolkhani and Mr Karimnia arrived in Turkey in 2008 where they were immediately arrested and deported to Iraq without regard for their asylum request, on the basis of illegal entry. They re-entered Turkey a few days later and were detained

in the foreigner's department. Their request for legal assistance was not complied with, and they were convicted of illegal entry, with a suspended sentence. At the hearing, they stated that they were at risk of death in Iran and had entered Turkey with the assistance of a smuggler in order to go to Canada and claim asylum.[15]

Another concerning issue is the statement of the Greece Asylum Committees. Amnesty International declared that two Syrian refugees are at risk of being forcibly returned to Turkey after Greece's highest administrative court rejected their final appeals against earlier rulings declaring their asylum claims inadmissible. This could set a dangerous precedent for future returns of asylum-seekers under the EU-Turkey deal. The Council of State found that the decisions of the Appeals Committees holding that Turkey is a safe third country for the two applicants were reasonable. The Council of State also decided not to refer the cases to the European Court of Justice to determine the question as to whether Turkey can be considered a "safe third country" by a narrow majority of 13 votes to 12. Legal changes introduced to Turkey's Law on Foreigners and International Protection under the post-coup state of emergency, have increased the risk of refoulement, by removing the suspensive effect of appeals against deportation (Amnesty International, 2017).

The European Commission reported through its seventh report on EU Turkey migration deal that the Greece Appeal Committees are slow in decision-making. So far they have issued only 1,699 decisions. 132 were on admissibility and 1,567 on merits. (European Commission, Seventh Report on the Progress made in the implementation of the EU-Turkey Statement, 2017).

For instance, in the months following the deal, Greece´s asylum appeals committees ruled in many instances that Turkey does not provide effective protection for the refugees (Human Rights Watch, 2017).

[15] Available online: http://www.asylumlawdatabase.eu/en/content/ecthr-abdolkhani-and-karimnia-v-turkey-no-3047108-22-september-2009

With the Noori case later in September 2017, the premise of the safe third country provided by Turkey was accepted. This is a game-changing decision after year and a half after the joint statement.

3.4 Different views on the issue by EU and NGOs

The Noori case made a closer look through the lens of a concrete person on the issue. Noori said that he was sleeping on a mattress on the floor in a cell with five other people. This situation occurred in Greece where he has been detained for more than a year and a half. Noori didn't get a clean blanket since his arrest (Gogou, 2017).

3.4.1 Return of the irregular migrants

The situation in the Greece islands is crucial and obviously, European Commission won´t show the circumstances where are the detained people. However, the premise on which the deal was constructed (Turkey is a safe place for refugees) was flawed (Gogou, 2017). Amnesty International brought news that shown the detained person's life conditions: "*On the Greek islands the harrowing human cost of the deal is laid bare. Not allowed to leave, thousands of asylum-seekers live in a torturous limbo. Women, men and children languish in inhumane conditions, sleeping in flimsy tents, braving the snow and are sometimes the victims of violent hate crimes* (Gogou, 2017)*"*.

Amnesty International also reported that as of 1 December 2017, the hotspots on Lesvos, Chios, Samos, Leros, and Kos are 7,400 over capacity: 12,981 people in facilities with a capacity of just 5,576, the groups say. Thousands, including single women, female heads of households, and very young children, live in summer tents, essentially sleeping on the ground, and exposed to the cold, damp and rain as the weather worsens.

On the other side the Seventh Report on the Progress made in the implementation of the Turkey EU Statement of the European Commission brought interesting data: "*Since 20 March 2016, there were 1,307 returns to Turkey under the EU - Turkey Statement. The*

returned persons had either received a negative asylum decision (including negative decisions at second instance), had withdrawn their application for international protection, or had not applied for asylum in the first place" (European Commission, Seventh Report on the Progress made in the implementation of the EU-Turkey Statement, 2017). The European Commission proclaimed in its very recent Statement that 2041 migrants returned on a voluntary basis from Greece islands (European Commission, EU Turkey Statement The Commission´s Contribution to the Leaders Agenda, 2017).

As European Commission stated, the situation is for migrants to better to leave voluntarily than wait for their application. The joint statement is not dividing migrants from refugees so the process for asylum application is recognised slowly by the European side as well. The total amount of migrants who were sent back to Turkey is 10.029. When we see the total number of arrivals to Greece islands from the European Commission´s statement from 2016 - 27.711 (this data is from 17 March 2017), one third of the whole amount of people were returned to Turkey and the rest were resettled under 1:1 ratio as Syrians or stuck in Greece islands, or died or are missing.[16]

3.4.2 Resettlement of Syrians

8,834 Syrians were resettled so far from Turkey to the EU under the 1:1 ratio framework to 15 EU Member states (European Commission, Seventh Report on the Progress made in the implementation of the EU-Turkey Statement, 2017).

Regarding this situation, the European Union tries to find a solution for applying quotas system for Syrians resettlement. 13 member states have not yet resettled from Turkey and the Slovak Republic is one of them. The 1:1 ratio for Syrians seems to be well prepared but I assume it is still discriminating against any other citizens who cannot be resettled and were sent back to Turkey because of this.

[16] 1,150 people died or were reported missing during the year preceding the seventh Report on the Progress made in the implementation of the EU Turkey Statement.

Conclusion

The EU Turkey deal made on 18 March 2016 represents a new type of cooperation between Turkey and the European Union. As we could see from the first part of the article, there is long-term cooperation between the two counterparts from the 1960s of 20th Century. Turkey became a part of the UN Convention in 1962 but made the ratification on its own circumstances. The geographical limitations to the Convention made unrealistic any possibility to request and receive refugee protection for those coming from non-European countries.

On the other hand, Turkey´s current political system was discussed by many authors and also by the Greece Asylum Committees whether it is a safe third country. The coup in July 2016, dismissal of 110000 state employees, violation of freedom of speech is still making Turkey a doubtful in safety provides. The crucial Noori case from 22 September 2017 changed this status and Turkey is considered is now by the EU as a safe country. I mentioned also that in 2009 Turkey decided in the case of Abdolkhani and Karimnia with sending the asylum seekers back to Iraq, completely against the principle of non-refoulement.

EU is not very strictly showing with its reports on the progress made by the EU Turkey deal that the joint statement has its bugs. The admission of missing and died people is still a blur on the EU´s clear vision on how the migration has to be solved. Another fact is the discriminating 1:1 ratio to other than Syrians. Citizens of Afghanistan, Iraq, Iran, Libya or even Russian who will come recently to the Greece islands will be automatically resettled and can apply for asylum (if they are under the refugee status) in Turkey.

Turkey is still in the game for accession to the European Union and the fulfilment of the deal will be a big help for the application. Whereby the joint statement will be a success, in our opinion, it won´t affect Turkey´s application process. The article mentioned a couple of serious issues regarding Turkey and its violation of human rights and international law, however, the deal is recently proclaimed by the EU as

a huge success. The prize for Turkey´s help – 6 billion € will be another aspect, which will be good to not forget. If Turkey won't use the money transparently, it will be a huge fail for the EU. There is more research needed in the end of 2018 when Turkey will be given the whole amount. Transparency of the used money from EU by Turkey will be surely proclaimed by medias in the first quarter of 2019.

The legal issues and the fulfilling of the principle of non-refoulement remain the biggest challenge of the EU Turkey deal. The risk of sending back the asylum seekers to the countries of their origin which is under war or risk of violation of their fundamental human rights can be a very bad advertisement for EU if these cases will show up in the future. If I consider that Turkey is restricting entry visa requirements and is negotiating readmission agreements with several countries of origin, it can be assumed that the EU is increasingly delegating to Turkey the policy of containment of migration flow, despite the risk of chain refoulement of people needs of protection.

EU is overlooking Turkey´s "violations" of the deal, internal policy-making and Turkish legal system to show its competitors from external borders, for instance, Russia and its own member states, that it can deal with migration by its own. By its own means with quick diplomatic, not binding, not a legal agreement with a country, which is doubtful, and can get more than itself can to EU give.

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THE EUROPEAN UNION AND THE PROMOTION OF GENDER EQUALITY AND EMPOWERMENT OF WOMEN AND GIRLS[17]

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Abstract

The aim of this article is to focus on the role of the European Union within the issue of gender equality not only within the member states of the EU but focus is on its role all around the world as a global actor with normative as well as soft power. The article would like to provide deeper inside in to activities of the European Union within this issue. The main focus is whether there is intersectional approach within their activities in the field of gender equality behind borders on theory which represents its action plans or documents issued within this field.

Key words: gender equality, intersectionality, sustainable development goal, European Union

Introduction

Equality between women and men is a basic value of the European Union since the very beginning – the Treaty of Rome, which included equal pay for equal work without focus on gender.[18] The European Union has created significant influence on its member states especially through its law, which member states must have accepted not even before they enter the European Union but after that as well. After the Article 119 of the Treaty of Rome there were strengthening in the field

[17] This work was supported by the Slovak Research and Development Agency under the contract No. APVV-16-0540

[18] The Treaty of Rome (1957), Article 119, [online] Available at: https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf [Last accessed on 20.12.2017]

of gender policies especially during 1970s through three important directives on Equal Pay, Equal Treatment and Social Policy Directive.[19]

It is important to create standards for states inside the European Union. However, the European Union has played a significant role not only for state inside but for state outside the borders as well mostly by spreading of norms. As Manners argued, the European Union itself has normative basis which ´predisposes it to act in a normative way in international relations. ´[20] It is easier to influence member states through norms, but to be able to act and influence states all around the world could be harder task. Through the Neighbourhood Policy and Foreign and Security Policy the European Union ´wish to build on common interests with partner countries of the East and South and commitment to work jointly in key priority areas, including in the promotion of democracy, rule of law, respect for human rights, and social cohesion. ´[21] The important role has also the Development Policy, through which the European Union with its member states are able to provide 50% of development aid all over the world and help to eradicate poverty in developing countries.[22]

The aim of this article is to deal with the role of the European Union within the area of the gender equality and its promotion outside its borders. It deals with the concept of intersectionality and analyse whether the European Union within its activities outside the borders uses this concept. This article deals with the intersectional approach within the creation of gender equality or non-discrimination policies in general as well as with respect to creation of activities and cooperation

[19] KANTOLA, J. 2010. *Gender and the European Union.* Palgrave Macmillan, p. 31.
[20] MANNERS, I. 2001. Normative Power Europe: The International Role of the EU. p. 9. [online] Available at: http://aei.pitt.edu/7263/1/002188_1.PDF [Last accessed on 20.12.2017]
[21] EUROPEAN UNION EXTERNAL ACTION. 2016. European Neighbourhood Policy (ENP). [online] available at: https://eeas.europa.eu/headquarters/headquarters-homepage/330/european-neighbourhood-policy-enp_en [Last accessed on 20.12.2017]
[22] EUROPEAN COMMISSION INTERNATIONAL COOPERATION AND DEVELOPMENT. n.d.. European development policy. [online] Available at: https://ec.europa.eu/europeaid/policies/european-development-policy_en [Last accessed on 20.12.2017]

outside the borders of the European Union, within different development programmes and action plans.

Within this article I decided to use the analysis, which has been designed by Emanuela Lombardo and Lise Rolandsen Agustín (2011) within their article *Framing Gender Intersections in the European Union: What Implications for the Quality of Intersectionality in Policies?* where they analysed the framing of intersectionality within the gender equality policies in the European Union in the period between 1995 and 2007. They focus on different documents from this time and tried to find, whether there is or there is no mention about intersectionality through selected codes. They tried to find two things, ´whether gender and any other inequality (class, ethnicity/race, sexual orientation, disability, age, religion/ belief, marital/family status, nationality/citizenship status, or regional belonging) are addressed in a given document. Secondly, they address the relationship between the inequality categories that appear in the text, distinguishing whether it was additive, competing, separate, intersecting, or hierarchical, and whether intersectionality was clearly articulated. ´[23] They also use types of policies, which were used within the QUING research - gender based violence, non-employment and intimate citizenship. They studied different kind of documents such as law documents, parliamentary debate and so on and divided the content of these documents in to basically two sections, the first one, which identified the problem and the second one, which provided or brought possible solutions of the problem.

For the purpose of this analysis, I have decided to use official documents, which dealing with the issue of gender equality and empowerment of women and girls within the external action of the European Union. With respect to my research area, gender equality within the external action of the European Union is not possibly to talk

[23] LOMBARDO, E., ROLANDSEN, AGUSTÍN, L. 2011. *Framing Gender Intersections in the European Union: What Implications for the Quality of Intersectionality in Policies?*. Oxford University Press, p. 6.

about any kind of laws or strong, legally binding documents. The European Union mostly use action plans, statements, etc. I have selected *Communication from Commission to the European Parliament and the Council - Gender Equality and Women Empowerment in Development Cooperation* (2007) and two strategic documents in form of action plans, which first is *EU Plan of Action on Gender Equality and Women's Empowerment in Development 2010-2015* and the second is still actual document *Gender Equality and Women's Empowerment: Transforming the Lives of Girls and Women through EU External Relations 2016-2020.* First task was to identify, whether above mention policy issues are part of the selected documents. Second issue was to code the documents in to selected codes, used by Lombardo and Agustín, which are sexuality, nationality/citizenship status, marital/family status, age, class, gender, regional belongings, disability, religion or belief, ethnicity/race**.** The task was not to try to find the single mention of them, or issues, which could be included under these codes, the task was to find whether there is any mention or possible identification of intersection at least two of them, most favourably gender and other, because I focused on documents about activities of the European Union within the gender equality beyond borders. I also identified, whether there was direct and explicit mention about intersectionality or it was only behind the meaning of the concrete parts of selected documents.

1. Intersectionality and gender equality

Probably more than before there is intersectionality in highlight of studying of inequalities. From the point of view of critiques, there is kind of obsession by the identity(ies) of people and identity politics behind the intersectionality. However, multiple discrimination which is could be also in form of intersectional discrimination is a problem and it is necessary to deal with it.

1.1 Intersectionality as a concept

The idea of intersectionality, as overlapping of inequalities, was developed during 1980´s in USA as part of feminist studies. First of all, theory was dealing with the issue of inequalities based on gender and social class but under the influence and activism of black women there has been more and more inclusion of the issue of race.[24] The term intersectionality has been created by Kimberle Crenshaw (1989), when she through several cases of multiple discrimination explained how courts are not able to deal with the concept of intersectionality in discrimination, because they use ´dominant ways of thinking about discrimination. Consider first the definition of discrimination that seems to be operative in antidiscrimination law: Discrimination which is wrongful proceeds from the identification of a specific class or category; either a discriminator intentionally identifies this category, or a process is adopted which somehow disadvantages all members of this category. ´[25] Within this article as well as her later work she focused mainly on explanation the problem of intersectionality with respect to discrimination of black women. Later on, in the article *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color* (1991) she brought division of intersectionality on structural and political. Structural intersectionality is intersectionality created by structures in which we live and which could be based on needs of majority of us without taking in to consideration the needs of specific group. One of the example Crenshaw presented were shelters for victims of domestic violence, which were not able to help in situation, which influenced black women much more in comparison to white women. ´The fact that minority women suffer from the effects of multiple subordination, coupled with institutional expectations based on

[24] KOLÁŘOVÁ, M. (2008): Na křižovatkách nerovností: gender, třída a rasa/etnicita. *Gender, rovné příležitosti, výzkum*, Vol. 18, No. 2, pp. 1-10.

[25] CRENSHAW, K. (1989): Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. University of Chicago Legal Forum**:** Vol. 1989 , Article 8, pp. 139-167. [online] Available at: http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8 [Last accessed on 20.12.2017]

inappropriate non-intersectional contexts, shapes and ultimately limits the opportunities for meaningful intervention on their behalf. ´[26] Political intersectionality deals with the conflicts between political agendas. ´The need to split one's political energies between two sometimes opposing political agendas is a dimension of intersectional disempowerment that men of color and white women seldom confront. Indeed, their specific raced and gendered experiences, although intersectional, often define as well as confine the interests of the entire group. ´[27]

Intersectionality is sometimes criticized because of its uselessness. If somebody is discriminated because of gender it is discrimination because of gender and if there is discrimination because of race, it is discrimination because of race. However, there is evidence, that there is overlapping of grounds of discrimination and it is necessary to deal with it to be able to address the disadvantage correctly.[28] Intersectional discrimination could be understand as form of multiple discrimination, however there with specifications. Makkonen (2002) explained differences between discrimination in form of multiple, compound and intersectional. According to Makkonen, multiple form of discrimination has mathematical connotation, where one person faced discrimination based on ´different grounds at different times.´[29] Compound discrimination defines as something, what ´should be taken to refer to such a situation in which several grounds of discrimination add to each

[26] CRENSHAW, K. 1991. Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color. *Stanford Law Review* Vol. 43, No. 6, p. 1251. [online] Available at: https://sph.umd.edu/sites/default/files/files/Kimberle_Crenshaw_Mapping_the_Margins.pdf [Last accessed on 20.12.2017]

[27] Ibid. pp. 1251-1252.

[28] WILLIAMS, S. 2017. What Is Intersectionality, and Why Is It Important?. *Care2.* [online] Available at: https://www.care2.com/causes/what-is-intersectionality-and-why-is-it-important.html [Last accessed on 20.12.2017]

[29] MAKKONEN, T. 2002. Multiple, compound and intersectional discrimination: bringing the experiences of the most marginalized to the fore. Institute For Human Rights Åbo Akademi University. [online] Available at: http://cilvektiesibas.org.lv/site/attachments/01/02/2012/timo.pdf [Last accessed on 20.12.2017]

other at one particular instance: discrimination on the basis of one ground adds to discrimination based on another ground to create an added burden.´[30] Intersectional discrimination defines cases, when there are different grounds of disadvantage which are in interaction.

1.2 Intersectionality as part of policies/activities

The aim of this article is to find out, whether there is or there is not intersectionality within the documents dealing with gender equality behind borders of the European Union. Lombardo and Agustín argued, that incorporation of intersectionality into policy-making could bring better results within the gender equality policies.[31] Sandra Fredman claimed, there is intersectional approach within the CEDAW Convention, which ´does not regard 'women' as an undifferentiated category, but recognises the ways in which different aspects of different women's identity interact to produce disadvantage. ´[32] She argued not only main text of CEDAW Convention but general recommendations of CEDAW Committee include intersectional aspects.

Even though there are advantages of intersectional approach within policies, its incorporating in to policy-making could be still problematic. Olena Hankivsky and Renee Cormier (2011), as well as other authors mentioned within their article *Intersectionality and Public Policy: Some Lessons from Existing Models* ´acknowledged the lack of effective intersectionality methodologies. ´[33] They argued the concept

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[30] Ibid. p. 11.

[31] LOMBARDO, E., ROLANDSEN, AGUSTÍN, L. 2011. *Framing Gender Intersections in the European Union: What Implications for the Quality of Intersectionality in Policies?*. Oxford University Press.

[32] FREDMAN, S. 2016. *Intersectional discrimination in EU gender equality and non-discrimination law*. Luxembourg: Publications Office of the European Union, p. 35.

[33] HANKIVSKY, O., CORMIER, R. 2011. Intersectionality and Public Policy: Some Lessons from Existing Models. *Political Research Quarterly,* Vol. 64, No. 1, p. 219. . [online] Available at: https://www.researchgate.net/profile/Olena_Hankivsky/publication/249802852_Intersectionality_and_Public_Policy_Some_Lessons_from_Existing_Models/links/55919c7f08ae47a34910b0e1.pdf [Last accessed on 20.12.2017]

of intersectionality and its incorporation in to policy making is still unknown as well as are unknown ways how to use it.

2. European Union, intersectionality and gender equality beyond the boarders – analysis of documents

As I have already mentioned, the aim of this paper was to find out, whether the European Union has used intersectional approach to deal with the promotion of women and girl's rights behind its borders. It is important to say, that issues of gender equality are part of activities of the European Union behind borders. It is possible to see for example in the Regulation No. 806/2004 of the European Parliament and of the Council of 21 April 2004 on promoting gender equality in development cooperation, which claimed that poverty is more problematic in case of women, and that it is important to include gender mainstreaming within all development cooperation.[34]

The European Union not only include gender aspects in general to its activities, but has created also special activities or programmes, which dealt directly with the issues of gender equality and promoting and protecting of rights of women and girls. I have selected three documents from the European Union, which deal with the issue of gender equality behind borders of the European Union and which include mostly plans for activities in this field.

The first selected document for analysis is *Communication from Commission to the European Parliament and the Council - Gender Equality and Women Empowerment in Development Cooperation* from 2007, which ´was intended to send the strongest possible signal regarding the importance of Gender Equality in all future EU development cooperation efforts. ´[35]

[34] EUR-LEX, n.d. Promoting gender equality in development co-operation - Summaries of EU legislation. [online] Available at: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=LEGISSUM:r12522 [Last accessed on 20.12.2017]

[35] EUROPEAN COMMISSION – INTERNATIONAL COOPERATION AND DEVELOPMENT. 2007. Communication from the commission to the European

The second document is *Commission Staff Working Document - EU Plan of Action on Gender Equality and Women's Empowerment in Development* for years 2010 -2015, which focused mostly on fulfilment of Millennium Development Goals focused on gender equality (no. 3) and maternal health (no. 5). ´At the same time, this Plan of Action aims to reinforce EU coordination regarding gender equality policies in development cooperation with partner countries in the interest of having more of an impact on the ground. ´[36]

The last analysed document is still in action *Joint Staff Working Document - Gender Equality and Women's Empowerment: Transforming the Lives of Girls and Women through EU External Relations* for years 2016-2020, which in comparison to the previous one focuses on the programme of Sustainable Development Goals and especially the goal number 5. This document ´provides a framework for transforming the lives of girls and women through EU External Relations. It reaffirms the essential role of gender equality and the empowerment of women and girls as drivers for sustainable development. The EU sees women and girls' rights as both a standalone goal and a crosscutting issue in development policy. ´[37] Document is based on experiences from previous action plan, has brought priorities and has tried to achieve more effective empowerment of women and girls.[38]

Parliament and the Council: Gender equality and women empowerment in development cooperation. [online] Available at: https://ec.europa.eu/europeaid/communication-commission-european-parliament-and-council-gender-equality-and-women-empowerment_en [Last accessed on 20.12.2017]

[36] SAVE THE CHILDREN RESOURCE CENTRE. 2012. EU Plan of Action on Gender Equality and Women's Empowerment in Development. [online] Available at: https://resourcecentre.savethechildren.net/library/eu-plan-action-gender-equality-and-womens-empowerment-development [Last accessed on 20.12.2017]

[37] EUROPEAN UNION DELEGATION TO THE FEDERAL REPUBLIC OF NIGERIA AND TO THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES. n.d. European Union´s Gender Action. [online] Available at: https://eeas.europa.eu/sites/eeas/files/european_union_gender_action.pdf [Last accessed on 20.12.2017]

[38] EUROPEAN COMMISSION, HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY. 2015. Joint Staff Working

The first document from the point of view of my analyses is not including intersecting approach with respect to dealing with gender equality or discrimination in a large extent. Within the first document I could identify all together twenty- three cases of possible intersectional approach in dealing with the topic. Fifteen of them were possible to identify as intersecting between class and gender, two of them were gender and age, two were gender and family/marital status, two of them gender and sexuality and last two were gender and regional belonging. It is important to say there was no direct mention about intersectionality or not even about multiple discrimination. All identified cases of possible intersectional approach were not direct, mostly they were "behind the meaning" of the text.

The second analysed text included less possible identified cases of intersectional understanding of inequalities. All together there were only fifteen cases and once again it was dominance of gender and class (8 cases), five cases of gender and age, one case of gender and regional belonging and one case of gender and religion/belief. Once again, these cases were not direct, they were identified only as meaning of the concrete text. There is no mention about at least multiple discrimination of women and girls as well.

In comparison to these two documents, the third one is totally different. First of all, the different nature of this document in context of intersectionality could be identified through the fact in includes two direct mention about intersectionality, intersectional approach or intersection of disadvantages. The document includes also higher number intersection of at least two disadvantages. I could have identified seventy-two cases of intersectional interpretation of disadvantages or the framing of the issue in general. The clash of gender and class is again the most common within the document but it

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Document - Gender Equality and Women's Empowerment: Transforming the Lives of Girls and Women through EU External Relations 2016-2020. [online] Available at: https://ec.europa.eu/europeaid/sites/devco/files/staff-working-document-gender-2016-2020-20150922_en.pdf [Last accessed on 20.12.2017]

is mentioned less than in the first one (21 times). The second most common clash is between gender and age. This is mostly because the document focuses not only on women anymore, but has included girls as another group as well. There is all together nineteen mentions of this clash. Third one is gender and regional belonging with twelve times of mentioned, and next one is gender and sexuality with eight times. Here, I believe, is necessary to mention that there is only one mention about women from LGBTI community and possible disadvantages of them but only with respect to problem of gender pay gap, which could be worse if there is intersection of disadvantages based on gender and, inter alia, sexual orientation. I identified the issue of sexuality mostly framed in connection with sexual violence or reproductive rights. Gender in connection with family/marital status and were identified six times, gender and ethnicity three times, gender and disability two times and one times gender and religion/belief. The multiple discrimination was mentioned as part of the annexes of the document. However, they were not part of analyses. I analysed and coded only the main text of document. I mentioned here only intersection of two grounds of disadvantage but within this document it was possible to observe huge increase of clashes or mention of intersectionality between more than two and even more than three disadvantages. As I mentioned this included (still only) two direct references about intersectionality or intersecting of disadvantages. However, if I would like to compare this document with previous two documents, there is still majority of these intersections mentioned within the context of the text (as was the case of previous two documents), but I evaluate them more visible and it was easier to identified these mentions of intersectionality or this intersectional framing of concrete problems of issues.

Conclusion

This article focuses on the intersectionality as concept, which is still more and more important and interesting for different researchers. The aim of the article was to introduce in short, the above mention concept, its creation and possibility to use it within the policy making. The most

important part of the article is analysis of selected documents, which deal with the issues such as gender equality and empowerment of women and girls behind border of the European Union especially within the development cooperation.

For the analysis was used methodology of Lombardo and Agustín, who analysed documents dealing with the similar issues within the European Union. I analysed three documents, which have the nature of action plans of statements of the European Union. The aim was to find out what kind of approach use the European Union with respect to discrimination and empowerment of women and girls. The analysis showed there is increase of intersectional approach within the documents of the European Union from the year 2007 to the year 2010. Meanwhile the first two documents include not so much intersectionality, the last document and its content showed much more possible cases of using of intersectional approach.

To conclude, it is necessary to mentioned these results are only based on three documents. Even though they are strategic one, there could be change if I would have analysed more than these selected three documents. It is also important to mention, as it was in case of Lombardo and Agustín research, these data are only dealing with theoretical issues. I do not studied application of these plans in reality and practice. The methodology of coding could be also influenced by the personal setting of the person who coded and analysed the text. It is possible, that if somebody else tried to analyse the text, he/she could find out different results. I believe it is important to mention these limits of this work. Even though I believe it is good sign that there is still more and more interesting in to intersectionality of inequalities, there is shift from one fits all approach towards more inclusive approach especially because of taking in to account the role of intersectionality of inequalities.

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HUMAN RIGHTS – SILVER LINK IN EU EXTERNAL RELATIONS[39]

Doc. JUDr. Branislav Fridrich, PhD.

Abstract

The paper is dealing with human righs policy aspect in the EU external relations. It analyses the legal foundations of this competence in founding treaties, following individual legal acts and other doucments, upon which this policy is applied. The paper is also underlining some strategic procedures of the European Union in relation to third countries in area of human rights.

Key words: human rights policy, EU external relations, political framework treaties, European instrument for democracy and human rights

Introduction

European Parliament member Laima Liucija Andrikienéová of Lithuania had called on the EP meeting of 16 December 2010 the High Representative of the Union for Foreign Affairs and Security Policy – Mme Cathrine Ashton to secure, that the human rights and democracy support will become „silver link connecting all areas of exgternal policy" and that „the human rights will not disappear out of this structure". Human rights policy of the EU are set in the Treaty of the European Union, EU Charter of fundamental rights as well as in the Strategic framework for human rights and Action plan for human rights and democracy.

In this paper we will analyse the European union and its tools used in the external relations used for the implementation of EU human rights standards in third countries.

[39] Outcome of the project VEGA No.1/0347/17: Difficulties of fundamental human rights and freedoms protection guaranteed by the Constitution of the Slovak Republic and its relation to international and Union law

Legal foundation of EU external relations including human rights application

According to article 3 para 5 of the Treaty on European Union: „in its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter."

According to article 2 of the Treaty on the European Union, the Union is based on values:

a) respect of human dignity,
b) freedom,
c) democracy,
d) equality,
e) the rule of lawand
f) respect for human rights, including the rights of persons belonging to minorities.

These values are common to member states in the society, where the pluralism, non-discrimination, tolerance, justice, solidarity and equality betweem women and men rule.

As stated in the article 21 of the Treaty on European Union, belonging to Title V - General provisions on the Union's external action and specific provisions on the common foreign and security policy, the Union's action on the international scene shall be guided by the principles which have inspired its own creation:

a) democracy,
b) the rule of law,
c) the universality and indivisibility of human rights and fundamental freedoms,

d) respect for human dignity,
e) the principles of equality and solidarity,
f) and respect for the principles of the United Nations Charter and international law.

„The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the above-mentioned principles. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations. (art. 21, second sentence, TEU)“

As continuously defined by the TEU (art. 21, para 2 TEU): The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

(a) safeguard its values, fundamental interests, security, independence and integrity;
(b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
(c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;
(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;

(g) assist populations, countries and regions confronting natural or man-made disasters; and
(h) promote an international system based on stronger multilateral cooperation and good global governance.

Union respects above-mentioned principles and follows aims and objectives in relation to development and implementaiton in different areas of external relations, as stated in the title V of the Treaty on European Union (articles 21 up to 46), i.e. in the whole area of EU external relations, including common foreign and security policy with defence policy as its integral part, and also as stated in the part V of the Treaty on functioning European Union (articles 205 up to 222), i.e. common commercial policy, development cooperation, economic, financial and technical cooperation with third countries different than development ones, humanitarian aid, restrictive measures after the postponing or limitation of economic and financial relations with third countries, international agreements with third countries or international organisations, the Union's relations with international organisations and third countries and union delegations, solidarity clause (support and help to member states in case of terrorist attack and natural or by men caused disaster) as well as in development and implementation of exteral aspects of other Union policies.

Union ensure conformity between other areas of its external relations and between this and other of its policies. This conformity is guaranteed and the Council and Comission is cooperating with High Representative of the Union for Foreign Affairs and Security Policy. According to article 22 of the Treaty on European union, based on above mentioned princples and objectives stated in article 21 of the Treaty on European union, strategic interests and objectives are identified by European Council in decisions, which are related to common foreign and security policy and other areas of Union external relations, which use to be connected with concrete country or reion. Decision of the European Council define their duration, and the means to be made available by the Union and the Member States. As stated in

article 22, para 1 of the Treaty on European Union, The European Council shall act unanimously on a recommendation from the Council, adopted by the latter under the arrangements laid down for each area. Decisions of the European Council shall be implemented in accordance with the procedures provided for in the Treaties. The High Representative of the Union for Foreign Affairs and Security Policy, for the area of common foreign and security policy, and the Commission, for other areas of external action, may submit joint proposals to the Council.

The EU Strategic framework for human rights and democratisation

The Council had adopted Strategic framework of the European Union for human rights on 25 June 2012, document number 11855/12, stating principles, objectives and priorites addressed to improving efficiency and consistency of European Union policies as such in incoming ten years. Support and defence of human rights and democracy out of member states borders is common responsibility of the European Union and its member states. The European Union is striving human rights violation worldwide and if there exists such violation, the Union is endeavour that victims should have access to justice and remedy and that the actors should be hold responsible.

According to this objective, the European Union reaffirms its commitment to the promotion of human rights, democracy and rule of law in all aspects of its external rlations. This should help to strengthen ability and mechamis of early warning and prevention of crises leading to human rights violation. The Union should also deepen cooperation with partner countries, international organisations and civil society and creating of new partnership to be adaptable to changing environment.

As contained in the framework, the EU will strenghten its cooperation with partners worldwide for support of democracy, mainly development of real and verified electoral processes and representative and transparent democractic institutions for citizens. The EU will promote

human rights in all areas of its external action without exception. In particular, it will integrate the promotion of human rights into trade, investment, technology and telecommunications, Internet, energy, environmental, corporate social responsibility and development policy as well as into Common Security and Defence Policy and the external dimensions of employment and social policy and the area of freedom, security and justice, including counter-terrorism policy. In the area of development cooperation, a human rights based approach will be used to ensure that the EU strengthens its efforts to assist partner countries in implementing their international human rights obligations.

The framework als ounderline to role of EU in implementing EU priorities on human rights: The EU will continue to promote freedom of expression, opinion, assembly and association, both on-line and offline; democracy cannot exist without these rights. It will promote freedom of religion or belief and to fight discrimination in all its forms through combating discrimination on grounds of race, ethnicity, age, gender or sexual orientation and advocating for the rights of children, persons belonging to minorities, indigenous peoples, refugees, migrants and persons with disabilities. The EU will continue to campaign for the rights and empowerment of women in all contexts through fighting discriminatory legislation, gender-based violence and marginalisation.

There is also strenghent link to UN and internationally recongnised principles of human rights protection and promotion: The EU will encourage and contribute to implementation of the UN Guiding Principles on Business and Human Rights. The death penalty and torture constitute serious violations of human rights and human dignity. Encouraged by the growing momentum towards abolition of the death penalty worldwide, the EU will continue its long-standing campaign against the death penalty. The EU will continue to campaign vigorously against torture and cruel, inhuman and degrading treatment. The fair and impartial administration of justice is essential to safeguard human rights. The EU will step up its efforts to promote the right to a fair trial and equality before the law. The EU will continue to promote

observance of international humanitarian law; it will fight vigorously against impunity for serious crimes of concern to the international community, including sexual violence committed in connection with armed conflict, not least through its commitment to the International Criminal Court. Courageous individuals fighting for human rights worldwide frequently find themselves the target of oppression and coercion; the EU will intensify its political and financial support for human rights defenders and step up its efforts against all forms of reprisals.

Lively and independent civil society is essential for proper existence and implementation of human rights, while the effective involvement of civil society is fundmanetal for the successful human rights policy. The European Union use to give value to regular dialogue with civil society in and out of the European Union and is touched by the intentions in some countries to limit the civil society independence. The European Union as the leading donor has continue in support of human rights defenders according to European iniciative for democracy and human rights (2000-2006), European instrument for democracy and human rights (2007-2013) and financial mechanism for democracy and human rights (2014-2020) and all these tools made the system of financial support more flexible and accessible.

European instrument for democracy and human rights

The Union assistance according to Regulation 235/2014 of the European parliament and Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide should be exposed in a way to complement other instruments for implementation of the Union policies connected to demoracy and human rights. There exists many of them, from political dialogue and diplomatic demarches up to other tools for financial and technical cooperation including also geographical and thematic programmes. The Union assistance should be also complementary to other actions oriented more on crisis according to an instrument contributing to stability and peace founded by the Regulation 230/2014 of the

European Parliament and Council, icnluding emergency actions necessary for the first phase of the implementation transition. As stated in the reuglation establishing a financing instrument for democracy and human rights worldwide, the Union should provide assistance focused on global, regional, national and local human-rights and democracy problems in cooperation with civil society. In this connection, the civil society should be considered as the one comprised all types of social actoins by individuals and communities, which are independent of state and whose activities should suuport human rights and democracy including human rights defenders as defined by UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on human rights defenders).

Within implementation of regulation establishing financing instrument for democracy and human rights worldwide, the attention should be paid local strategies of Union in area of human rights in the concrete country. While democracy and human rights objectives have to be concentrated to all instruments for financing externatl relations, assistance of the Union as set in the regulation should have concrete supplementary and complementary role due its global character and ints independence of the approval by government and public bodies of the third countries. This role should provide cooperation and partnership with civil society in sensitive issues of human rights and democracy including exercise of migrants human righs, asylum seekers and internally displaced people rights and it should also provide flexibility and necessary reactivity in responding to changing circumstancs or need of beneficiars in relation to crises. Regulation establishing financing instrument for democracy and human rights worldwide should also provide Union possibility to articulate and support concrete objectives and measures on international level, which are not nor geographicaly nor crises oriented, but are requested by transational approach or involve actions within the Union and third countries.

Besides, regulation establishing financing instrument for democracy and human rights worldwide should provide necessary framework for actions as support of independent electoral observation missions under the EU auspices (EU EOM) requesting the cohesiveness of policies, unified management system and common standards of operation. According to regulation establishing financing instrument for democracy and human rights worldwide, the development and consolidation of democracy may include providing of strategic support to national democratic parliaments and founding assemblies, mainly focused on the improvement of its ability to support and enforcement of democratic reform processes.

Union should endeavour particular attention to countries and emergency situation, in which human rights and fundamental freedoms are in danger and in which unrespect of human rights and freedoms is particularly visible and systematic. In that cases the political priorities should be mainly to support respect of relevant international law rules, providing of material support and resources for the operation of local civil society as well as contribution to its work exercised under extra-difficult circumstances.

In that countries or situations and in connection to objective dedicating to urgent protection of human rights defenders and democratic activists, the Union should be able to flexible and timely response by using quicker and more flexible administrative procedures and by activisation of the other funds and financial mechanisms. This may happen in case when the selection of proceeding may directly effects the efficacy of the measures.

In conflict situation the Union should support, that all parties of the conflict will follow their obligation from international humanitarian law, conform to the relevant legal regulations of the European Union. In transition countries the Union should endeavour convenient surrounding providing to political actors possibility to declare their loyalty to demoractic pluralistic system. Regulation establishing a financing instrument for democracy and human rights worldwide

should be more focused on support of democratic structures, separation of powers and public bodies liability. As good example may be used electoral observation missions of the European Union, which significantly and sucessfully help to democratic processes in third countries. However, democracy support is spreaded overall the electoral process itself and thus all phases of electoral cycle should be considered. Costs and expenses of electoral observation missions should not take unproportional amount from the all accessible financial sources according to the regulation. The importance of the postion of the distinctive representative of the European Union for human rights should be emphasized. He contribute to unification, consistency and efficacy of the Union action and human rights policy and should also help to guarantee, that all Union instruments and member state actions are goning to be involved consistently conform to the achievement of Union policies.

Union should endeavour on more effective exercise of accessible sources for the purpose of optimalisation of its external relations. It may be achieved by cohesiveness and complementarity of Union instruments for exteral relations as well as by creation of synergy between the Regulation establishing a financing instrument for democracy and human rights worldwide, other mentioned instruments for financial support of external relations and Union policies. Such action may have consequence in mutual strenghtening of programmes derived from instruments for financial support of external relations.

The work with bilateral and multilateral partners

EU gives human rights in the centre of its relations with all third countries including strategic partners. EU human rights policy is strongly set on universal norms, it caries reflection on individual country neighbourhood and also reflects the strategy of human rights set for each country. EU is trying on constructive involvement of third countries and in relation to this, it also deepen dialogue on human rights with partners with the aim to guarantee, that dialogues will led to concrete outcomes. EU also set the questions on human rights in all

formats of bilateral political dialogue, including the highest political level. Besides EU is also cooperating with partner's countries on identification of areas, where the EU measures for geograúhic nad financing shold be used for the support of projects strengthening human rights, including educational support and traning in human rights. Once EU is facing violation of human rights, it uses to use the whole range of available instrumensts including sanctions or criticism. EU may also achieve bigger progress in the human rights clause application in framework political agreements with third countries. The particular EU interest in promotion and support to human rights in European Neighbourhood policy through support of complex agenda of local political reform including democracy and human rights in the centre of policy "more for more".

European union use to be loyal to multilateral human rights system, which may impartially monitor human rights norms and call all states to be liable. EU strongly oppose to any actions on questioning universal application of human rights and continue its suport to work of UN General assembly, Human rights committee and International Labour organisation in area of fighting agains human righst violaton. Independence and efficacy of the Office of the UN high commissioner for human rights as well as other UN contractual monitoring bodies and special procedures is crucial. EU use to underline the leading role of UN Human rights committee in emergency cases of human rights violations and contribute to effective work of this body. The EU representatives call all UN Human rights committee members to confirm highest standards of human rights and to fulfil their obligation made before the last elections. Especially the foundation of universal periodic reporting system and its outputs was highly welcome and EU member states made a commitment to accept recommendations of this reports and use them in bilateral relations with third countries. In incoming rounds of universal periodic report, as the EU representatives several times declared, are going to carefully point out on the implementation of the obligations from universal reporting review by

third countreis, which had accepted these outputs and going to be supported by the EU directly.

EU in its external relations continue cooperation with the Council of Europe and OSCE. In area of human rights there is exercising close cooperation with other regional organisations as African Union, ASEAN, SAARC, Organisation of American States, Arab League, Organisation of Islamic Cooperation and Pacific Islands Forum with the aim to support consolidation of regional human rights mechaisms.

Conclusion

The main objective of this paper was to analyse and bring proceedings used in the EU external relations connected to human rights closer. The focus is interdisciplinary and mainly dealt with most important tools of the EU human rights policy. The consequence of promoting human rights to political agreements with third countries is in establishing possibility to adopt internationally conform EU rules in case of human rights violation by third countries. The variability of individual mechanism of the EU human rights policy is also reflected in the possibilities of the flexibility in documents amendments. However, there still exists the lack of transparency, the using of selective conditionality, application of double standards, absence of unified understanding and approach to integration of human rights to the EU external economic policy, what is also mixed with the complexity of the human rights concept in the EU external relations generally. Even when there was strengthen the constitutional dimension, the fragmented legal framework of the human rights concept in the EU together with the "full" competence in area of human rights, as well as the inconsistency between external and internal dimension of the protection and promotion of human rights in the EU may help to understand the explanation of the limited progress of the EU in this area.

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THE CONSTRUCTION OF R2P IN THE EU FOREIGN AND SECURITY POLICY

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Abstract

The paper focuses on the construction of Responsibility to Protect in the EU security strategies and documents related to conduct of CFSP and CSDP. Based on the normative power of the EU defined by Manners in 2002, it was expected from the EU to be strong protagonist of such norm based on fundamental principles of international law such as protection of human rights and prevention of genocide. However, the R2P has not become the stepping stone of further evolution of the EU as a human rights protector, at least not explicitly. This paper focuses then on the implicit support and integration of the R2P principles into the security strategies and in order to answer the question *how the EU constructs the R2P in its security strategies*.

Key words: Responsibility to Protect, CFSP, CSDP, normative power, security strategy

Introduction

The Responsibility to Protect emerged as a response to bloody conflicts in Europe and Africa in the 90s. It potential was, however, ruined due to the different opinions on humanitarian intervention or the use of force in general. This split of opinions was to be seen also in the EU. Despite the huge potential, the strong explicit support for the Responsibility to Protect was hard to get, despite the vision of the EU of its own security and defence policy and military presence in the international field. This paper focuses thus on *how is the R2P constructed in its security strategies.* The security strategies (European Security Strategy 2003, Revised European Security Strategy 2008 and

[40] This work was supported by the Slovak Research and Development Agency under the contract No. APVV-16-0540

Global Strategy 2016) are the most relevant documents dealing with international and internal conflicts as a source for further security threats. The external character of the R2P applying mainly to countries with low record of democracy and rule of law also pushes for analysis of these strategies.

Responsibility to Protect

The development of Responsibility to Protect is dated back to 2001 when the International Commission for Intervention and State Sovereignty (ICISS) published its report as a response to multiply failures of the international community in the 1990s in Somalia, Rwanda, Srebrenica and Kosovo. As said by Wedgewood[41], this has caused mainly acceptance of unilateral use of force that aims to protect human lives or to save them. The ICISS report refers to three principles – 1) responsibility of the state for protection of its population; 2) responsibility of the international community to assist the state if facing problems with the protection of its own population; 3) the possibility of using necessary means when state is not able or willing to protect its own population[42]. Due to the third point, the R2P is often connected with the norm of humanitarian intervention, which is a military intervention for humanitarian purposes in order to prevent or stop gross violations of human rights, especially ethnic cleansing and genocide. Humanitarian intervention does not have the consent of the target country[43], does it can be also called a peace-enforcement mission when applying the language and classification of mission under the United Nations. However, this relation between R2P and humanitarian intervention is exaggerated. The proponents of the R2P claim that it is primarily the state sovereignty and rights and duties of the state that is emphasized by the R2P, not its diminishing. State have to be aware that

[41] WEDGEWOOD, R. 2000. Unilateral Action in the UN system. *European Journal of International Law, vol. 11, no.* 2, pp. 349-359.

[42] INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY. 2001. *Responsibility to Protect.* Ottawa: International Deveopment Research Centre.

[43] CENTRE FOR STRATEGIC STUDIES. 2000. *Humanitarian Intervention: Definitons and Criteria.* Strategic briefing papers, vol. 3, part 1.

the right to govern the territory is dependent on respect of fundamental rights and principles of democracy. If such condition is constantly violated, the state should not enjoy the full rights of its own. Such approach refers to 'conditional sovereignty'. Based on this, the ICISS suggested three levels of responsibility for state and the international community - responsibility to prevent, responsibility to react and responsibility to rebuild. Here especially the responsibility to rebuild is of crucial importance as the intervening parties are participating the damaging the infrastructure, villages and cities in order to fight against the perpetrators, however, after the fight end they do not participate on the state re-building and leave the country destroyed with low possibility of quick recovery. In this respect, the responsibility to rebuild must be compatible with the peace-building practise and complementarity of the bottom-up and top-down approach. This complementarity is one the basic characteristics also of human security concept which was developed by the United Nations Development Programme referring also to non-military threats for humankind including climate change, water sanity, hunger or diseases[44]. This concept was later elaborated by scholars as well as practitioners[45]. Human security made its way also to the EU and if mentioned, usually it is along with the R2P. The Responsibility to Protect is however mostly connected with the term 'protection of civilians which became the substitute for the R2P not only in the UN missions, but also NATO and the EU ones. Yet, the protection of civilians is part of the jus in bello (conduct of warfare) connected with the Geneva Conventions that covers parts of population that are either not part of the conflict

[44] United Nations Development Programme. 1994. *Human Development Report*. New York: Oxford University Press.

[45] ALKIRE, S. 2003. *A Conceptual Framework for Human Security*. CRISE Working Paper, University of Oxford, Oxford; BAIPAJ, K. 2000. *Human Security: Concept and Measurement. Occasional Paper no. 19.* Kroc Institute for International Peace Studies, Notre Dam; KING, G., & MURRAY, C. J. 2001-02. Rethinking Human Security. *Political Science Quarterly, vol. 116, no.* 4, pp. 585-610; SUHRKE, A. 1999. Human Security and the Interests of States. *Security Dialogue, vol. 3, no.* 30, pp. 265-276; NEWMAN, E. 2001. Human Security and Constructivism. *International Studies Perspective*, 239-251; PARIS, R. 2001. Human Security: Paradigm Shift or Hot Air? *International Security, vol. 26, no.* 2, pp 87-102.

(civilians) or prisoners of war, sick and wounded, or medical staff. The protection of civilians became common aim of the peace-support operations as it was also in Libya in 2011.

After the ICISS report was published, Responsibility to Protect was unanimously adopted at the World Summit in 2005 when two articles were put into the Outcome Document[46]. Among other issues, this document involved also an Article on the creation of the Office Special Advisor on Prevention of Genocide under the UN Secretary General. Later, the Office of Special Advisor on Responsibility to Protect was established as well. The Responsibility to Protect (R2P) may be considered a mission by the former Secretary General of the United Nations, whether it was Ban Ki-Moon, or his predecessor, Kofi Anan. The question of humanitarian intervention, large-scale violations of human rights and genocide feed the debates all around the world and it was expected to be the next normative standards. However, the above mentioned two articles were vague and open to further clarification and interpretation. Here, the arising actor with already 25 Member States and constituent treaties based on human rights, democracy and rule of law comes into play. The European Union portrayed as a human rights protector and force of good[47], lately characterized as a normative power[48] was expected to push the R2P forward in the norm cycle[49] in order to become an established and accepted international norm. Contrary to the expectation, the EU did not act with one voice, quite the opposite. Due various reasons including different opinions on humanitarian intervention and state sovereignty, the EU was not capable of pushing the R2P explicitly neither at the supranational, nor at the international level[50]. However, the lack of this explicit support does not mean that the EU does not support the idea of the R2P. What

[46] UNITED NATIONS. 2005. World Summit Outcome Document.
[47] KAYA, T. Ö. 2009. Identifying the EU's Foreign and Security Policy Roles. *Uluslararası Hukuk ve Politika, 5*(17), 107-131.
[48] MANNERS, I. 2002. Normative Power Europe: A Contradiction in Terms? *Journal of Common Market Studies, 40*(2), 235-58
[49] FINNEMORE, M., & SIKKING, K. 1998. International norm dynamics and political change. *International Organization, 52*(4), 887-917.
[50] ibid

R2P represents for the EU can be found in various documents through detailed conceptualization of the R2P applying the content analysis, it is possible to identify the most often context in which the representation of R2P is to be found.

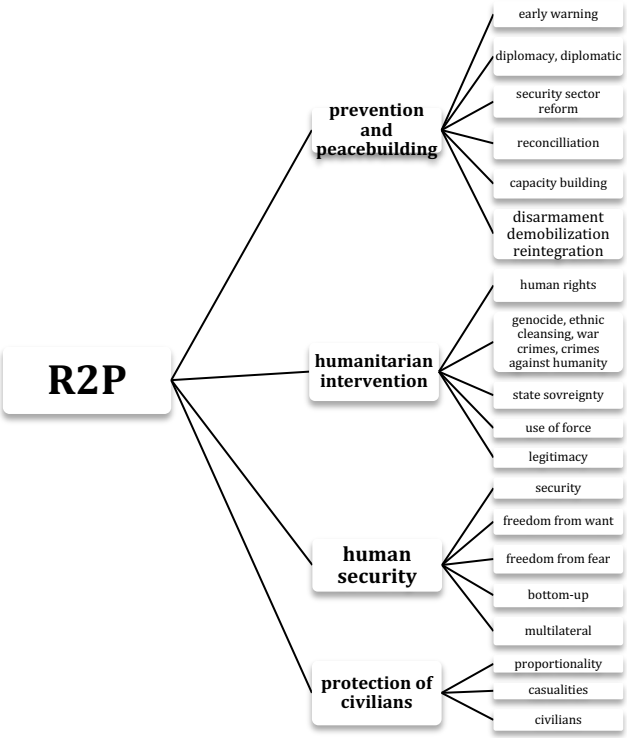
Based on the conceptualization of R2P, Figure 1[51] shows the coding scheme for the R2P that was further used for directed content analysis[52] looking for particular words that were identified in the literature on R2P. The directed content analysis was supplemented with the features of hermeneutic content analysis[53] as this considers also the context in which the words are used.

[51] JANKOVÁ, K. 2016. Constructing Responsibility to Protect in the EU Common Security and Defence Policy and its Implications for the EU Roles. PhD Thesis, Comenius University in Bratislava, p.29.

[52] MAYRING, P. 2000. Qualitative Content Analysis. *Forum: Qualitative Social Research, vol. 1, no.* 2. http://www.qualitative-research.net/index.php/fqs/article/view/1089/2385 (retrieved 14.12.2017).

[53] BHATTACHERJEE, A. 2012. Qualitative Analysis. In A. Bhattacherjee, *Social Science Research: Principles, Methods and Practises. TextbooksCollection. Book 3*, pp. 113-117. Tampa, Florida: CreativeCommonsAttribution-Non-Commercia-SHare-Alike.

Figure 1: The abstraction process of R2P



The EU as a Normative Power

The European Union has been an interesting topic for academic research as well as for policy makers as this unique type of organisation has created a complete new set of the theories and approaches including integration theories and debates on actorness. The framework of this paper is based on the nature of the EU in the context of power that involved the civilian, military and normative power. In early 70s with a set aim to establish a common market and to avoid any large-scale international conflict on the European continent, the EU has been

characterized as a civilian power[54]. Not only the EU could not be defined as a military power in that time as it had no common troops, not even a common foreign policy, but it was desired to base the behaviour and activities on non-military means, using rather economic, diplomatic and cultural policy. Galtung pushing the debate even further referred to the EU as an "ideological power" due to its commitment to the founding treaties and evolving the non-discrimination principle and principle of human rights[55].

After the adoption of Maastricht Treaty, the establishment and further evolution of the Common Foreign and Security Policy, ever closer relations with the African countries and beginning of crisis management, the EU used its power also externally, not only internally on its members, candidates and potential candidates. Ian Manners calls this power a normative power and the EU a "changer of norms in the international system"[56]. He puts the normative power in the contrast with empirical power which enforces its own rules through military attack and develops its concept on the analysis of the cases of the death penalty and support for International Criminal Court. The core norms Manners identifies are the centrality of peace, the idea of liberty, and respect for democracy, the rule of law, lastly, human rights. Along these central norms, he also recognizes four 'minor' norms the EU exports being social solidarity, anti-discrimination, sustainable development, and the principle of good governance. Due to Manners' original work well establishment, other scholars[57] provide further explanations that are complementary to Manners' idea and create a

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[54] DUCHÊNE, F. 1973. The European Community and the Uncertainties of Interdependence. In M. KOHNSTAMM, & W. HAGER, *A Nation Writ Large? Foreign-Policy Problems before the European Community*, pp. 19-20. London: Macmillan.

[55] GALTUNG, J. 1973. *The European Community: A Superpower in the Making.* . London: Allen and Unwin.

[56] MANNERS, I. 2002. Normative Power Europe: A Contradiction in Terms? *Journal of Common Market Studies, vol. 40, no. 2*, 235-58, p.252.

[57] See i.e. THOMAS, D. C. 2012. Still Punching Below its Weight? Coherence and Effectiveness in European Union Foreign Policy. *Journal of Common Market Studies, vol. 50, no.* 3, p. 473.

more theoretical framework including normative institutionalism and normative entrapment. Generally, there is little doubt that the EU uses its soft power and is able to shape preferences of others regarding core norms and rules of international relations. Laïdi clearly states that normative power refers to "idea of setting world standards"[58]. To set the "world standards" is part the EU's picture of the world and its own reality. Normative power as such is based on social constructivist approach interconnected with identity and role theory as "the debate on the normative power stresses how the EU's norms shape the EU's identity, upon which then role conceptions are built. The respect of human rights inside the Union influences also the perception of others who then expect Union to intervene in cases when human rights are violated and that it would prioritized the human rights above material interests."[59]

The concept of normative power has become useful especially in the study and European Neighbourhood Policy, Eastern Partnership and Enlargement. The emphasis was given on the export of the EU values. Was has been undermined in the research is the way how the EU accepts the external norms as the studies focuses usually on how it exports its own as those coming from the United Nations. This paper thus studies the EU not as a 'norm maker', rather as a 'norm taker'[60].

EU as norm taker and the R2P

As mentioned in the Introduction, the process of the norm-taking in the EU in case of the R2P was unsuccessful. The EU was divided especially because of the critical issue of humanitarian intervention. Despite multiple explanations that the R2P would not be tool in the

[58] LAÏDI, Z. 2008. Norms Over Power. In Z. Laidi, *Norms over Force. The Enigma of European Power* (C. Schoch, Trans., pp. 35-50). New York: Palgrave MacMillan, p. 39.

[59] JANKOVÁ, K. 2016. Constructing Responsibility to Protect in the EU Common Security and Defence Policy and its Implications for the EU Roles. PhD Thesis, Comenius University in Bratislava, p. 60.

[60] JANKOVÁ, K. 2016. Constructing Responsibility to Protect in the EU Common Security and Defence Policy and its Implications for the EU Roles. PhD Thesis, Comenius University in Bratislava, p. 60.

hands of powerful states to militarily intervene in weak states, the notion of NATO intervention in Kosovo and the debates on the state sovereignty prevailed. The UK and France as former colonial powers were more prone to intervene. Moreover, they had also the armed troops and equipment to conduct such operation in case the responsibility to react had to be operationalized. France was a strongest proponent of the adoption of the norm and in 2003 he tried to push the R2P also in the European Security Strategy. Based on 'right to intervene' France considered the R2P to be part of its 'civilisation mission'. The United Kingdom with its tradition of "ethical foreign policy"[61] and Blair's "doctrine of international community"[62] where the future of the British nations is crosses with the future of other nations. Germany, on the other hand stoop in the opposition of such open definition of the R2P, the use of force especially. Due to its history of two world wars and a long-term control of militarization, Germany has been very reluctant to deploy troops and give consent to use of force[63]. However, it supported the NATO airstrikes in Kosovo and when the narrow definition of the R2P would be on table with strict and clear rules on the use of force, Germany was expected to support it.

Before, during and after the World Summit in 2005, there were various references of the core EU institutions (Commission, Parliament, Council and European Council) that could have signalized the possible adoption of the R2P in the European strategic or legal order[64]. In the end, the success of the norm was negligible. For several years, the R2P

[61] COOK, R. 1997, May 12. Robin Cook's speech on the government's ethical foreign policy. *The Guardian.* https://www.theguardian.com/world/1997/may/12/indonesia.ethicalforeignpolicy (retrieved 14.12.2017).

[62] BLAIR, T. 1999, April 22. *The Blair Doctrine.* Retrieved from PBS Newshour: http://www.pbs.org/newshour/bb/international-jan-june99-blair_doctrine4-23/ (retrieved 14.12.2017).

[63] BROCKMEIER, S., KURTZ, G., & JUNK, J. 2014. Emerging norm and rhetorical tool: Europe and a responsibility to protect. *Conflict, Security & Development, vol. 14, no.* 4, pp. 355-377.

[64] JANKOVÁ, K. 2016. Constructing Responsibility to Protect in the EU Common Security and Defence Policy and its Implications for the EU Roles. PhD Thesis, Comenius University in Bratislava, pp. 82-85.

lost its potential. In 2008 it was reborn, yet in a negative sense when Russia used the R2P justification for the intervention in Georgia. The rebirth at the UN was guaranteed by the set of civil uprisings in the North Africa, especially the situation in Libya and fast process of mission deployment based on the protection of civilians under the command of NATO and allied forces with the consent from the United Nations Security Council[65]. In this respect, the EU was able to agree on a mission too, however, the process took too long and subsequently there was no time for the deployment of the mission therefore the Council Decision 2011/201/CFSP that establish EUFOR Libya was kept on the paper. The EU Member States contributed to the NATO mission.

The cyclic process of the EU support and reluctance for the R2P was summarized and explained in article by De Franco, Meyer and Smith in 2015 using the norm cycle theory[66]. They claim that the R2P was socialized as a norm in the EU and that it failed on three levels of implementation - programmatic, bureaucratic and operational. Despite the R2P was several times mentioned in the documents, this was not sufficient, neither was the presentation and promotion of the R2P towards public and state representatives as the references did not deal with any operationalization of the R2P. thus the R2P was kept in an abstract space of an idea, but not a policy. They provide four reasons of the failure of the R2P: a) failure of the "senior echelons" whose role was to achieve successful socialization of the norm at the European level; b) lack of pressure and initiative from the EU representatives or Member States to promote the R2P; c) the norm did not fit every Member State as they do not share the same strategic culture and have different attitudes towards the use of force; d) clarity of the norm itself.

[65] UNITED NATIONS SECURITY COUNCIL. Resolution 1973. New York.

[66] DE FRANCO, C., MEYER, C. O., & SMITH, K. E. (2015). 'Living by Example'? The European Union and the Implememtation of the Responsibility to Protect (R2P). *Journal of Common Market Studies, vol. 53, no.* 5, pp. 994-1009.

Point d) is of special relevance here, as the EU officials tend to claim that the fact they do not refer to R2P does not mean that they do not actually do it or in other words, the EU does it, it is just not called the R2P. Keeping this in mind, my aim is to look at how the EU does the R2P, how is the R2P reflected in the security strategies and whether concepts and strategies related to R2P are present in this strategies, whether explicitly or implicitly.

R2P in the EU security strategies

The paper analysis the cover of the R2P and related terms (conflict prevention, peacebuilding, human security, protection of civilians) in three EU security strategies (see summary in Table 1).

The EU has adopted its first security strategy in 2003, ten years after the adoption of Maastricht Treaty and the creation of CFSP. Moreover, the platform of European Security and Defence Policy was formulated after the Amsterdam Treaty and signature of the Petersburg tasks. Javier Solana from the position of newly created High Representative took it as personal mission to develop the security policy. The reasons for such security strategy was primarily the changing security environment. The rise of terrorism, long-lasting intrastate conflicts in Africa and South-East Asia, development of new military technologies and capabilities pushed the High Representative for creating a framework which would guide the EU's actions. Moreover, the invasion in Iraq divided the EU again, which was seen as a step back after the progress made in the CFSP and ESDP.

The *2003 ESS* did not focus on R2P in particular. It is important to keep in mind that in 2003 the R2P was still only a report, not much of a principle or norm. the term *'responsibility'* was used in connection with global security. The term *'protect'* is used in relation to security or human rights. But this discourse does not relate explicitly to situation covered by the R2P. with human rights still being an evolving principle in 2003, not much emphasis was put on it in this security strategy. Weak relation to the R2P has been proven also when analysing the particularities of responsibility to prevent and react as these were very

mitigated in the strategy. What the strategy does mention is the *„need to develop a strategic culture that fosters early, rapid and when necessary robust intervention"*[67] This is interested as it not also discusses a strategic culture built on similar perception of threats, but also the ambition to deploy a robust military mission. However, it does not focus on the cases in which these robust missions should be deployed excluding the mass atrocity crimes from the consideration. In this respect, the 2003 ESS *"illustrates the general commitment of the EU to traditional security in the context of international peace between and security of states."*[68]

Unlike the 2003 strategy, the 2008 revised version reflects more the fundamental principles of the EU and non-traditional understanding of security issues. The core is the reference to the R2P itself as well as human security concept. This shift was caused by the dramatic international events in South Sudan and Russian intervention in Georgia. Moreover, the two reports on the human security approach in the EU framework (Madrid and Barcelona reports) suggested better conceptualization of the human security approach. Comparing to 2003, the report more reflects other international actor and common commitment to the world affairs, also through the Responsibility to Protect. That is understood as 'sovereignty as responsibility' and 'state sovereignty'. It says that *"sovereign governments must take responsibility for the consequences of their actions and hold a shared responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity"*[69] which is an explicit reference of R2P and opens the possibility for humanitarian intervention. The revised strategy deals more also with conflict prevention and peacebuilding process. The progress towards normative commitment is

[67] THE EUROPEAN UNION. 2003. *A Secure Europe in a Better World. European Security Strategy*. Brussels, p.11.
[68] JANKOVÁ, K. 2016. Constructing Responsibility to Protect in the EU Common Security and Defence Policy and its Implications for the EU Roles. PhD Thesis, Comenius University in Bratislava, p. 89.
[69] THE EUROPEAN UNION. 2008. *Report in the Implementation of the European Security Strategy - Providing Security in a Changing World.* Brussels, p. 2.

underlined also as other areas of security are discussed including cyber security, energy security or climate change. The concrete reference to 'human security' supports the tendency to act as a normative power in CFSP and to interconnect the development and security through the security-development nexus. The 2008 revision continues in counter-terrorism and protection of refugees too. Crucial problem of this strategy is that it does not provide concrete steps for operationalization of the normative commitments. Thus, on the one side, these commitments are more adjusted to the EU roles the EU presents and the roles it is expected to fulfil; but on the other hand, these are just nice ideas without concrete plan how to achieve it. After this revision, the security environment has changed. Until 2016, when the Global Strategy for the European Union's Foreign and Security Policy: Shared Vision, Common Action: A Stronger Europe 2016. Shared Vision, Common Action was adopted, Europe has faced terrorist attacks, Russia annexed Crimea, the conflict in Syria was on its peak, the extreme right has risen not only among populations, but also among the political parties and parliamentary representatives, the discourse of hybrid threats and hybrid war replaced the traditional understanding of war and most of all, hundreds of thousands of refugees has come into Europe. This subjective worsening of security environment for the EU and its citizens created a huge space for pressure to adopt a new security strategy that would be more complex and would reflect the interconnective of these issues into one coherent guide on the external relations and security matters.

In this respect, the Global Strategy shifted back from this normative commitment to what the EU call "principled pragmatism". Moreover, because of the negative reactions on refugee crisis in several member states, High Representative Mogherini emphasized that EU cannot isolate itself from the global problems and that structural solutions needs to find[70]. She mainly referred to closed border in order to

[70] MOGHERINI, F. 2016, July 1. A Global Strategy for the EU - Shared Vision, Common Action: A stronger Europe.*Youtube.* https://www.youtube.com/watch?v=Pw6kyDzchoc (retrieved 14.12.2017).

"protect" the EU against refugees and migrants coming from North Africa, Middle East and Western Balkan. Closed borders to not solve the problems in the target countries. In terms of R2P, the strategy mentions that "*The EU will also promote the Responsibility to Protect, international humanitarian law, human rights law, criminal law. We [EU] will support the UN Human Rights Council and encourage the widest acceptance of the jurisdiction of the International Criminal Court and the International Court of Justice."*[71] This section was under the part dedicated to global governance and the UN system meaning that EU does not stand in the role of strong promoter and socializer of the R2P, rather it leaves to the UN. On the other hand, the general discourse behind use of the term 'responsibility' confirms certain level of normative commitment set in the 2008 revised strategy as it calls for more cooperative sense of responsibility for the neighbourhood[72]. The shift in the feeling of security and doubts about the processing of refugee crisis is reflected in anticipating the *'protection of Europe'* and *'protection of human rights'*. It recalls the "*protection of human lives, especially civilians".* One of the Global Strategy's core point was prevention related to structural roots of conflict. Yet, there is clear reference to the first pillar of the R2P when the strategy calls for prevention and cease of mass atrocities. The commitment to the normative power is also stressed when using the concept of human security as an integrated approach in conflict; peace and security; and conflict settlement. From the context it may be deducted that the EU understands the human security in the broader sense as a freedom from want and freedom from fear. Moreover, bottom-up approach as one of the main features of the human security has been mentioned in the strategy several times as well. In spite the common use of terms responsibility and human rights and features of human security the

[71] THE EUROPEAN UNION. 2016. *Shared Vision, Common Action:A Stronger Europe. A Global Strategy for the European Union's Foreign And Security Policy.* Brussels, p.42.

[72] *'shared responsibility'*, *'collective responsibility'*, *'co-responsibility'*, '*responsibility for our security*', '*responsibility for the neighbours'*, '*responsibility for surrounding regions'*.

strongest emphasis was put on EU's own security and its security and defence policy.

Table 1: Summary of the content analysis of R2P in EU security strategies

2003 ESS	2008 Report on Implementation of ESS	2016 Global strategy
- Responsibility for global security - Conflict prevention and threat prevention - Human rights invisible - State-like security understanding - Call for European strategic culture - Call for robust intervention without details	- One direct reference to R2P for R2P crimes One direct references to protection of civilians -Shared responsibility, state responsibility -broader understanding of security	- One direct reference to R2P - collective and co-responsibility - protection of HR, protection of human lives, especially civilians - Protection of Europe, - conflict prevention, - human security, bottom-up approach, capacity building - security policy, our security and security and prosperity

Conclusion

The paper analyses the way how the R2P was transposed in the EU security strategies. Based on the EU as normative power, I study if the EU is effective also as a norm importer, not only norm exporter. The

literature suggests that EU was not successful in full promotion of the R2P into an international norm due to failed process of norm socialization. On the other side, founded in the statements of the EU representatives I look closer whether the EU actually does the R2P and it just not call it that way. When analysing the three security strategies – 2003 ESS, 2008 Revised ESS and 2016 Global Strategy, there is a clear shift from the 2003 ESS to 2016 Global Strategy reflecting the changes in security environment. Moreover, the 2003 ESS lacked the normative commitment which was the strongest in the 2008 Revised version. In 2016 strategy this commitment decreased a bit due to a 'new' EU approach titled "principled pragmatism". The R2P is clearly present in the newest strategy mainly in the international context, but its individual parts have their stable place it the strategy as guided principles and strategies for conflict management. The biggest problem with "doing the R2P" and "just not calling it R2P" is that the support and promotion is presented in very similar statements for years which diminishes the level of seriousness with the commitment to this surviving international norm.

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FUNDAMENTAL RIGHTS IN THE EUROPEAN UNION – PERSPECTIVE OF THE DIGITAL ERA

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Abstract

The article focusses on the fundamental rights in the European Union, its general relation with the European Convention for the protection of Human rights and Fundamental Freedoms. The article deals also with two issues, first is the analysis of the article 51 para 1 of the EU charter and the application of the EU Charter by Member States na the second issue are the fundamental rights in the digital world.

Key words: Fundamental rights, EU charter, Court of Justice, European Convention for the Protection of Human Rights and Fundamental Freedoms, Fundamental rights in digital world

Introduction

Even prior to the binding nature of the EU Charter, the Court of Justice has ruled in a number of preliminary ruling cases that, according to settled case-law[73], fundamental rights and freedoms form part of the general legal principles the observance of which is ensured by the Court of Justice. Since the 1980s, in its case law, the application of Community (now European) standards (ie the obligation to respect fundamental rights) has also been extended to Member States in cases where they are acting under EU law. Their obligation to respect European standards of protection is the consequence of the need to maintain a uniform level throughout the EU.

The European Convention for the Protection of Human Rights and Fundamental Freedoms has a special significance in this regard and has

[73] in particular, Opinion of the Court 2/94 of 28 March 1996, ECR I 1759

always served as a basic inspiration and authority for the establishment of general principles and for the protection of fundamental rights[74]. Finally, these bases were taken up by Article 6 TEU, which, in addition to conferring on the Charter a legal obligation (paragraph 1), also declares the continuing relevance of the Convention when in para 3 states that the Union respects the fundamental human rights guaranteed by this Convention, which stem from the constitutional traditions of the Member States, as fundamental principles of European law. This was before the effectiveness of the EU Charter, and it also applies after the legal commitment to this document.[75]. Moreover, a certain authority of the Convention applies to the Charter when Article 52 para 3 states that, to the extent that this Charter contains rights corresponding to rights guaranteed by the ECHR, the meaning and scope of those rights is the same as the meaning and scope of the rights provided for in this Convention.

The Charter of Fundamental Rights of the European Union proclaims far more rights, and proclamations them in much detail, than the European Convention on Human rights had done. The Charter itself sets higher standards than the ECHR, in at least some cases where the two overlaps. The CJEU has implicitly refused to set higher standards, even when the issue was crucial in the case[76]. However, it is undeniable that some Charter provisions are vague and even debatable, and that often they merely express aspirations rather than enunciate rights. Consider respect for academic freedom (art. 13), legal, economic and social protection of the family (art. 33, right of access to preventative health care (art. 35) and high level environmental and consumer protection (art. 37 and 38).

[74] see, inter alia, Case C 260/89 ERT [1991] ECR 2925, paragraph 41, Case C-299/95 Kremzow [1997] ECR I-2629, paragraph 14, and Case C-309/96 Annibaldi [1997] I 7493, paragraph 12

[75] Eg. DEB, C-279/09, EU: C: 2010: 811

[76] see, for instance, the Melloni judgment

Art. 51 para 1 – when is EU Charter binding for the Member States?

The Charter applies only horizontally in that the rights provided can only be utilised when it is an institution of the EU or a MS implementing EU law that strips the aggrieved party of their rights. The Charter has not provided an overarching human rights doctrine that must be adhered to both in the EU's own institutions but also domestically. In the sense of Art. 51 par. (1) of the Charter, the Charter is binding on Member States only if they are implemented by Union law. Its commitment to the Member States is based only on a relative form. States are required to respect the rights protected by the Charter only if they are exercised by Union law.

The concept of the implementation of Union law has already established contours in the case law of the Court of Justice of the EU. The Court acknowledged that Member States must respect the Charter there, where they act as an agent of the European Union, ie in situations where they implement / apply specific rules of Union law[77],

Also, where the State interferes (derogates) with the subjective rights flowing from the norms of Union law, typically, for example, the internal market freedoms or the procedural rights of persons in criminal proceedings[78]. At the same time, the provisions of the Charter can not in itself establish its applicability[79]. The applicability of the Charter requires that a matter fall within the scope of European Union law, that is, the existence of a certain degree of correlation between the conduct of a Member State and Union law[80]. The charter is a shadow of Union law[81].

[77] Wachauf, 5/88, EU: C: 1989: 321; NS and Others, C-411/10, EU: C: 2011: 865
[78] (ERT, C-260/89, EU: C: 1991: 254, DEB, C-279/09, EU: C: 2010: 811).
[79] Torralbo Marcos, C-265/13, EU: C: 2014: 187, paragraph 30
[80] Siragusa, C-206/13, EU: C: 2014: 126, paragraphs 24 and 25
[81] LENAERTS, K., GUTIÉRREZ-FONS, JA The Place of the Charter in the EU Constitutional Edifice In PEERS, S., HERVEY, T. (eds) The EU Charter of Fundamental Rights. Oxford: Hart Publishing, 2014, p. 1513

It is clear from settled case-law of the Court of Justice that the fundamental rights guaranteed by the Union legal order apply in all situations governed by European Union law but not outside those situations. In that context, the Court has already pointed out that, in the light of the Charter, it cannot assess national legislation which does not fall within the scope of European Union law. On the other hand, where such legislation falls within the scope of that right, the referring court must provide all the necessary elements for the national court to assess the compatibility of that legislation with the fundamental rights which it observes.

In particular, it follows from the judgment in Åkerberg Fransson[82] that the Court of Justice has decided to retain a broader interpretation of the term 'when they are implementing Union law'. In essence, it is a repetition of the approach known from the Court's case-law in applying the general principles of law, which dominated the scope of Union law, respectively that the legal situation under consideration fell within the scope of Union law. Such an understanding of the scope of the Charter for the Member States is also underlined by most doctrinal publications[83].

The phrase 'if they are implementing Union law' must in any event be regarded as an expression of what the Explanatory Notes refer to as 'acting within the scope of Union law'. Both of them mean the same. Their substance is linked to Union law and the implementation of Union law and the scope of Union law is two sides of the same coin. Secondly, Charter articles are not eligible for stand-alone application. For their use in the matter it is essential that at least one legal rule of Union law be applied at the same time as a minimum sine qua non. It does not matter whether that rule is a matter of primary law or

[82] Åkerberg Fransson, C-617/10, EU: C: 2013: 105

[83] See also Judgment of the Court of Justice of 30 April 2014 in Pfleger and Others, C390 / 12, EU: C: 2014: 281, paragraph 33; Judgment of the Court of Justice of 27 March 2014 in the case of Torralbo Marcos, C265 / 13, EU: C: 2014: 187, paragraph 29; Judgment of the Court of Justice of 6 October 2015 in Delvigne, C650 / 13, EU: C: 2015: 648, paragraph 26 and Judgment of the Court of Justice of 26 September 2013 in the case of Texdata Software, C418 / 11, EU: C: 2013: 588.

secondary law, nor whether it has been or has not been properly and timely implemented in the domestic legal order of a Member State. Another condition is that the legal rule of Union law must not only be interpreted but actually applied. The applicability of a rule of law from Union law other than the Charter must manifest itself in a concrete and objectively identifiable connection with the matter itself. In other words, such a rule of law must be of fundamental relevance to a court decision and must create or at least co-create the legal basis for a court ruling on a particular matter. If the legal situation falls within the scope of Union law, then the qualitatively similar application of the Charter occurs regardless of whether the Charter is applied at Union or Member State level. There is therefore no difference between the protection of fundamental rights granted by the Court of Justice and the protection afforded by national courts.

Fundamental rights in digital world

The creation of a Digital Single Market is a priority of the Union and aims liberties associated with the EU internal market to expand to the digital world, thereby promoting growth and employment in the EU. Following the Lisbon Strategy, the Strategy Europe 2020[84] has introduced the Digital Agenda for Europe as one of the seven major initiatives, while accepting the key role of the use of information and communication technologies, that the EU will succeed in its effort in 2020. The Digital Agenda for Europe has seven policy areas.

European Union founds important to extend the current EU single market, which consist of free movement of goods, services, labor and capital. The single market makes the EU territory without any barriers. Currently four freedoms included in the internal market needs to reflect the development of the society and the digital era. After creating the Digital Single Market, the European Union can enjoy its full potential.

[84] Europe 2020 - A strategy for securing of a smart, sustainable and inclusive growth (COM (2010) 2020)

Is there a need to prepare a separate document as a Charter of Digital Fundamental Rights of the European Union?[85]. There has already been many of charters for digital world drafted and the question appears, whether it is necessary to have a separate document or our current legislative framework and current EU Charter is sufficient to cover also the challenges of the digital world. The authors of the drafts argue that when the EU Charter was created it was not certain and known that such a digitalization era will come and the society will need to cover effectiveness of human rights in the digital world too. For instance, the issues of artificial intelligence and machine learning or whether individuals have a right to encryption are very important currently. Another significant issue is the data protection in digital world.

To answer this question, we need to look closer to the current legal framework. Data protection is the crucial issue of the digital world. As it is already well known there was a reform of the data protection rules adopted to adjust the data protection rules to the current society development, mostly the digital development of the society. The reform includes General Data Protection Regulation which was adopted in April 2016 and will apply from 25. May 2018 and the Directive[86] which has to be transposed by Member States into their national law by 6 May 2018. Firstly, the data protection regulation gives more rights and intensifies already existing right of people to protect their data (such as: right to be forgotten, right to personal data portability, right to restriction of processing, right to access to personal data, right to rectification, right to know about the personal data breach). Principle of

[85] Some German experts did so: Available on https://digitalcharta.eu/wp-content/uploads/2016/12/Digital-Charta-EN.pdf (on 09.02.2018), another charter of Digital rights available on https://edri.org/wp-content/uploads/2014/06/EDRi_DigitalRightsCharter_web.pdf (09.02.2018)

[86] Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data and repealing Council Framework Decision 2008/977/JHA.

transparency is the main principle of the rights and mostly refers to clear, easy communication and information of the data subjects. On the other hand, the rights are creating the new obligations for the data controllers. A discussion about the right to explanation of decisions made by automated and artificially intelligent algorithmic systems is included in the General Data Protection Regulation. The right to explanation is viewed as a promising mechanism in the broader pursuit by government and industry for accountability and transparency in algorithms, artificial intelligence, robotics, and other automated systems.[87] Currently there are two opinions about the existence of the mentioned right.

We can also use to answer the question a decision of the European court of Human rights in the case Editorial Board of PravoyeDelo and Shtekel v. Ukraine[88] where the court stated: the risk of harm posed and communications on the Internet to the exercise and enjoyment of Human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press. Therefore, the policies governing reproduction of material from the printed media and the Internet may differ. The later undeniably have to be adjusted according to technology´s specific features in order to secure the protection and promotion of the rights and freedoms concerned. "The assumption behind the Court´s reasoning is that the Internet is likely to raise new problems for protection of fundamental rights and that the measures applied to traditional media will not cover effectively in the new digital environment."[89]

[87] Wachter, S., Mittlstandt, B., Florini, L.: *Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation,* In.: International Data Privacy Law, Volume 7, Issue 2, 1 May 2017, Pages 76–99

[88] Case no. 33014/05, judgment of 05. May 2011

[89] Polliciono, O.: European Judicial Dialogue and the Protection of Fundamental Rights in the New Digital Environment: An Attempt at Emancipation and Reconciliation, In: Morano-Foadi, S., Vickers, L.(ed): Fundamental Rights in the EU a matter of two courts, Bloomsbury, 2015, Oxford, p. 104.

Conclusion

The existence of the EU charter and its role in the fundamental right system together with European Convention for the Protection of Human Rights and Fundamental Freedoms is discussed even before the charter became binding for the Member States. Two courts CoJEU and ECHR are nowdays ensuring the correct application of the human and fundamental right in European space.

Current challenge for the fundamental and human rights is the digital world. It is obvious that the digital world has different challenges than the "real" world. The data protection reform fully covers the data protection in digital world and digital era. We also have currently the jurisprudence that deal with the current digital issue using the current legal framework and fills the gaps of the legislative framework. It is also obvious that for creation for creation of the Digital Single Market a new legal framework need to be enacted in different areas.

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THE SOFT POWER EU: CHANGES IN THE OBJECTIVES OF THE EU'S FOREIGN POLICY

Mgr. Henrieta Kunová

Abstract

Last AU-EU (5th) Summit in the end of November 2017 posed a lot of question marks about the evolution of Africa-EU relations. This article provides a careful process tracing analysis of the European Union's Global Strategy on Foreign and Security Policy, revised European Neighbourhood Policy, European Consensus on Development and Renewed Impetus for Africa-EU Partnership in order to draw interest areas/issues to be examined within the declarations of fourth and fifth AU-EU Summit. Within the text, we try to answer the question, whether the EU's objective - within the Common Foreign and Security Policy; on approaching identified problems has changed or not. Is the EU still the soft power that it used to be?

Key words: Africa, EU, partnership, Summit, security, peace, human rights,

Introduction

European Union (EU) has been the biggest partner for Africa either in trade, providing development aid or humanitarian assistance. Africa-Europe Summits have taken place since 2000 on a regular basis. Outcome of each of the summits is a joint declaration and a roadmap, or action plan that sets the goals of the partnership to be fulfilled and areas of the greatest importance for the following period of time.

The concept of soft power was coined by Joseph Nye in the early 1990s. It is opposed to hard power, as it is traditionally known – military power or economic power. It means "getting others to want

what you want"… "it coopts people rather than coerces them".[90] Soft power means include using persuasion, mediation and motivation when trying to get the object of interest into doing what you want him to do. It is stems from our values and believes, which are "expressed in our culture, in the policies we follow inside our country, and in the way we handle ourselves internationally."[91]

The EU certainly can be perceived as soft power taking into account these merits. It has been actively involved in humanitarian assistance and civilian missions in Africa, which have primary objectives - training events on topics such as human rights, legislative drafting, public order policing, combatting corruption, the application of local laws on irregular migration, integrated border management, human rights and gender etc.[92] This "knowledge sharing – transformation" is essential when building the partnership with African countries. However, the military or hard power of the EU can be perceived on the growth, EU's capabilities are still considerably smaller in using military operations than civilian missions. In 2016 alone 11 civilian missions were deployed, while the number of all military operations carried out abroad was only six.[93] The deployment of the military battle groups needs, as any other decision within the Common Security and Defence Policy (CSDP), unanimous vote by the Council.[94] EU seems to be very careful with handling the crisis and answering to them with military interventions, but a slight shift in the willingness to use military solutions to crises outside the EU borders can be observed recently.

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[90] Nye, Joseph S. "Limits of American Power." *Political Science Quarterly* 117, no. 4 (2002): 552. doi:10.2307/798134.

[91] Ibid.

[92] European External Action Service. (2016). *Common Security and Defence Policy of the European Union: Missions and Operations Annual Report 2016*. [pdf] Available at: https://eeas.europa.eu/sites/eeas/files/e_csdp_annual_report1.pdf [Accessed 29 November. 2017].

[93] Ibid

[94] European External Action Service. (2016). *EU Battlegoups*. [pdf] Available at: https://eeas.europa.eu/sites/eeas/files/factsheet_battlegroups.pdf [Accessed 3 December. 2017].

Recently adopted EU Global Strategy (EUGS) adopted the idea of 'principled pragmatism', which connects the benefits of both, hard and soft power. This shift in the foreign-, security- and defence-policymaking has marked in both, the rhetoric and the actions. "There is a genuine European way to resolving external conflicts and crises. It is made of civilian and military means, hard and soft power, strategic autonomy and cooperation with our partners, and includes promoting human rights and good governance, entails investing in strong societies, in education and development, and ensuring security and stability."[95]

It may be, therefore, obvious that the EU has changed its objectives and approach in doing the CSDP and CFSP. This shift should also appear in the relations between the EU and non-EU countries. The shift in the relationship between the EU and African countries – was taken to another level – not the traditional development donor-recipient relationship but to the partnership of two equals. How did the objectives set in the declarations between EU and African Union change over the time? This is the question to be answered by this article.

Methodology

This article provides a contextual analysis of the outcomes of EU-AU Summits of 2014 and 2017 with the aim of analysing the shift or change in the partnership of respective actors. with the aim of analysing the outcomes of the Africa-EU partnership strategy which was discussed during the 5th Africa-EU Summit in November 2017.

Using the method of process tracing and analysing texts of the European Union's "*A Global Strategy on Foreign and Security Policy*" (EUGS), the *Reviewed European Neighbourhood Policy* (ENP) and at the *Joint Communication on a renewed Africa-EU Partnership* I will be identifying the areas and territories which the EU has identified to be critical for its future deeper involvement outside its borders. In order for

[95] Ibid, p. 1

the analysis to be context-sensitive and relevant, I will then do quantitative context analysis in order to do the final qualitative analysis.

By drawing conclusions from these communications I think, this article will offer relevant analysis of the change that has been made within the EU-AU partnership. With the final analysis, it will be argued that the approach and objectives that the EU incorporates in its CSDP and EFSP have changed significantly compared to previous years and that we can expect the new kind of foreign and security policy making.

Context & Relevance of the Issue

The EU has recently experienced several waves of migrants and refugees fleeing from their war-torn countries to Europe. A lot of them were coming from Syria, where civil war is still on-going and has damaged cities, caused a lot of citizens to lose their homes, jobs and relatives. Others are coming with the vision of better quality life, more job opportunities from countries of Africa such as Nigeria. According to the United Nations Refugee Agency, more than 5000 Nigerians arrived to Europe through Mediterranean Sea, only in the first half of 2017.[96]

Since the collapse of political systems of North African countries in 2011, known also as Arab Spring, the security of European Union and its citizens became high on the agenda of the Union. Migrants coming to Europe ever since became the focus of political debate on national as well as European level. The rise of far-right and extremist political parties securitized migration crisis and used it to support their anti-European sentiments.[97]

[96] UNHCR. (2017). *Mediterranean Situation*. [online] Available at: http://data2.unhcr.org/en/situations/mediterranean#_ga=2.101924230.601753730.1496784793-397970665.1496784793 [Accessed 14 December. 2017].

[97] BBC News. (2016). *Guide to Nationalist Parties Challenging Europe*. [online] Available at: http://www.bbc.com/news/world-europe-36130006 [Accessed 14 December. 2017].

Very often are migrants the ones who are being blamed for increased number of terrorist threats. Although citizens and decision makers believe in this, numbers are showing rather different facts. According to Terrorism Situation and Trend Reports since 2011, it can be argued that with increasing number of migrants, the actual number of terrorist attacks within the territory of the EU has not increased considerably.

Figure number 1 shows what have been the latest trends in terrorism situation. Putting the numbers from five reports together in one chart, it is obvious, that terrorist threats have increased only by ten attacks during biggest migration influx in 2015 compared to 2014. In order to see whether there might be any causal relationship between terrorist attacks and migrants coming to the EU we can look at statistics by Eurostat on the number of asylum seekers in Figure number 3). While number of arrivals from Africa has doubled since the Arab spring in 2011, and number of asylum seekers has been growing rapidly since 2015, the number of terrorist attacks in the EU has not grown by similar ratio. Therefore, we can conclude that with incoming number of migrants or refugees, the threat of terrorism is not higher and thus is only a constructed, unnecessarily securitized threat by radical and nationalist political parties.

Figure 1: *Number of terrorist attacks carried on EU member states' soil & number of individuals arrested in the EU.*

Source: Data acquired from the EU terrorism situation and trend reports 2011 – 2016.

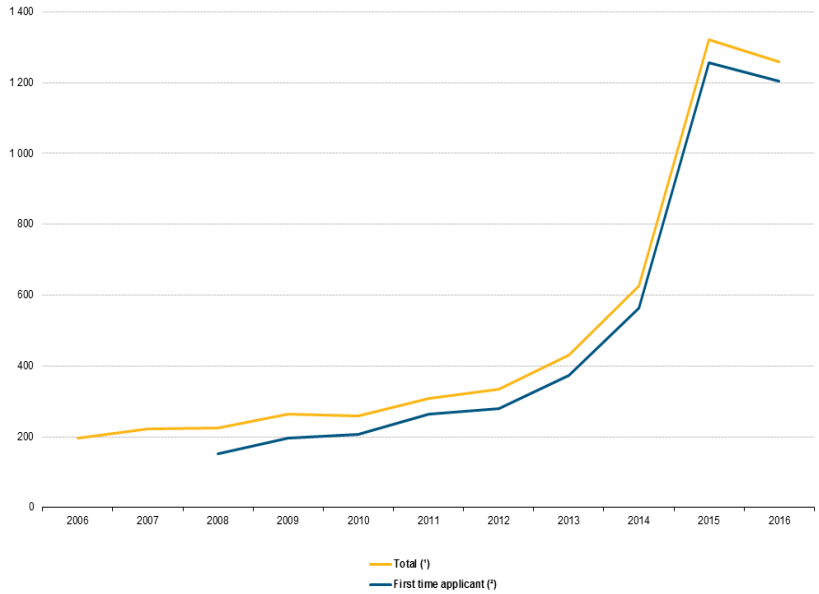


Figure 2: *Asylum applications (non-EU) in the EU-28 member states, 2006–2016.*

Source:

http://ec.europa.eu/eurostat/statistics-explained/index.php/file:asylum_applications_(non-eu)_in_the_eu-28_member_states,_2006%e2%80%932016_(thousands)_yb17.png

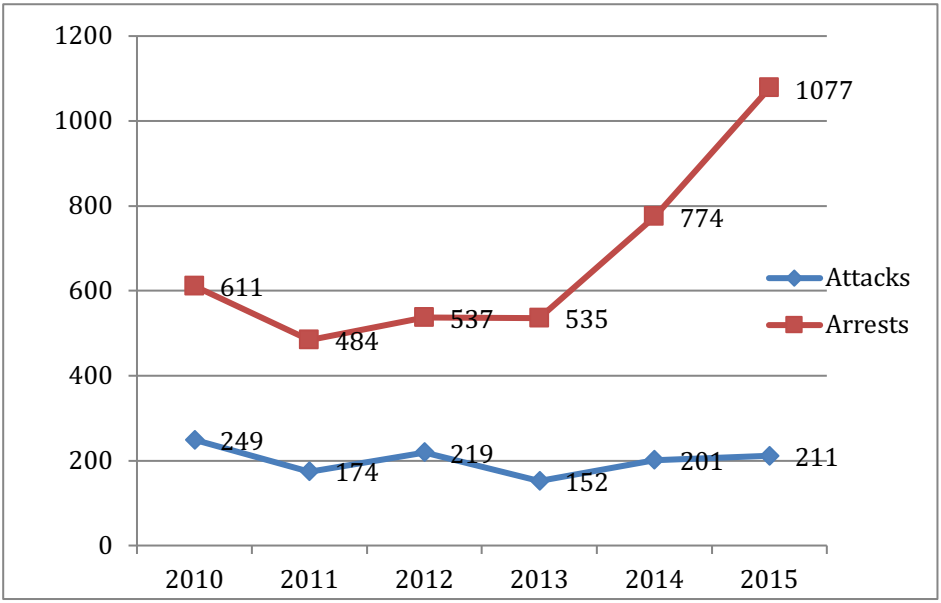
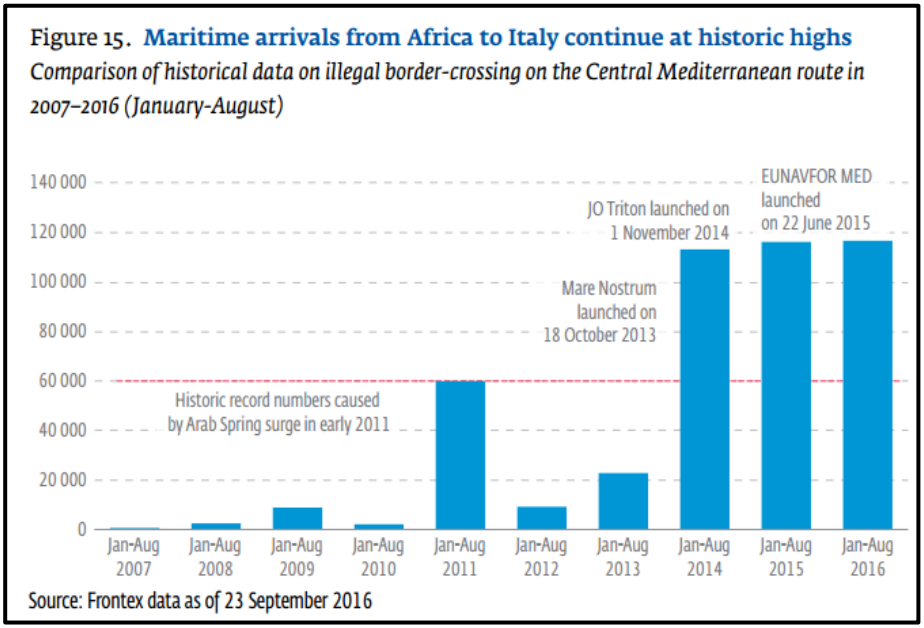


Figure 3: *Maritime Arrivals from Africa to Italy.*

Source:
http://frontex.europa.eu/assets/Publications/Risk_Analysis/AFIC/AFIC_2016.pdf



Security Issues in the Global Strategy

In recently adopted Global Strategy the Union pleges: "To guarantee our security, promote our prosperity and safeguard our democracies, we will strengthen ourselves on security and defence in full compliance with human rights and the rule of law." ... "We must be ready and able to deter, respond to, and protect ourselves against external threats." ... "Europeans must be able to protect Europe, respond to external crises,

and assist in developing our partners' security and defence capacities, carrying out these tasks in cooperation with others."[98] (EU, 2016, p. 19)

The Global Strategy identifies several security areas as well as territories which require special attention and treatment. Among different areas, we can find: terrorism, hybrid threats or energy insecurity. It points directly to threat of terrorism in connection with Africa, by saying: „To the east, the European security order has been violated, while terrorism and violence plague North Africa and the Middle East as well as Europe itself".[99] The wording of the strategy also encourages the severity of problems that the EU perceives to be existent outside its borders by saying that we live in times of „existential crisis".[100]

The Global Strategy identifies groups of states, which are in need of assistance. These areas include but are not limited to: Maghreb countries, sub-Saharan Africa, Sahel region, Horn of Africa, Middle East, Western Balkans, Central and East Asia, Russia and many more (EU, 2016). It is obvious that Africa and problems entangled with many African countries are great concern for European security.

The EU, however, started rethinking its strategies outside and aspires to create a solid European defence industry, more integrated defence cooperation as the area of foreign policy is still suffering from remaining mostly on the level of national decision-making. Therefore,

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[98] European Union. (2016). *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign And Security Policy*: p. 19 [pdf] The European Union. Available at: http://www.eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf [Accessed 28 November. 2017].

[99] European Union. (2016). *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign And Security Policy*: p. 7. [pdf] The European Union. Available at: http://www.eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf [Accessed 28 November. 2017].

[100] Ibid

the Strategy strives for improvinge coherence between the EU and its Member States in this realm.

In area of conflict and peacebuilding, the Strategy came to realisation that most of the disputes and conflicts have more structural causes and hence guided by the principled pragmatism, it promises that it „will act globally to address the root causes of conflict and poverty, and to promote human rights" … "will reach out to states, regional bodies and international organisations" … "will deepen our partnerships with civil society and the private sector as key players in a networked world".[101]

EU now puts security inside the Union at the same level of importance with the security outside its borders and plans to adapt to changes quickly and become more engaged in taking external action, aspiring for more preventive and responsive CSDP, but still maintaining focus on human security.

This article emphasizes the need for more engagement in Africa, mostly in sub-Saharan and Great Lakes region. Among five priorities that the EU stated in the Strategy following three are important in order to bring changes to these regions. *State and Societal Resilience to the East and South* is second priority. It is clearly stated that the EU aims for going beyond borders of its European Neighbourhood Policy's (ENP) countries: "The EU will support different paths to resilience, targeting the most acute cases of governmental, economic, societal and climate/energy fragility, as well as develop more effective migration policies for Europe and its partners.."[102] Third priority for the EU is *An Integrated Approach to Conflicts*, in which the EU pledges to implement expanded "comprehensive approach to conflicts and crises through a coherent use of all policies at the EU's disposal" while it also

[101] Ibid, p. 8.
[102] European Union. (2016). *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign And Security Policy*: p. 9. [pdf] The European Union. Available at: http://www.eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf [Accessed 28 November. 2017].

promises to "act at all stages of the conflict cycle, acting promptly on prevention, responding responsibly and decisively to crises, investing in stabilisation, and avoiding premature disengagement when a new crisis erupts."[103] Last priority which is set in the Global Strategy and that is relevant to be reflected hereby, is the EU's commitment to a global order, named *Global Governance for the 21st Century*. Here, the EU's wish is the adherence to human rights and sustainable development which would be achieved by supporting the UN "as the bedrock of the multilateral rules-based order, and development of globally coordinated responses with international and regional organisations, states and non-state actors."[104]

The previous successes of some of the EU's missions are bringing new dimensions and hopes for its future involvement. EU is deriving its future actions from it in the GS and wishes not to remain only a civilian power, but to further evolve into a stronger alliance with clear purpose in its future – to "work through development, diplomacy, and CSDP, ensuring that our security sector reform efforts enable and enhance our partners' capacities to deliver security within the rule of law."[105]

Great turn becomes the already mentioned strife for taking more preventive measures. It upholds the EU as a relevant actor in times of humanitarian crises and presents a new hope for its future involvement. EU has realised, that by now, it has acted rather reactively, intervening in conflicts and disputes at their escalation phases, than preventively. This means that its pre-emptive measures for conflict management can now bring not only short-term settlement but also long-term solutions.

The Strategy is also very decisive in promising to take action in surrounding regions in both south and east, on a case-by-case basis and with adherence to human security. It attempts to do so through integrated, multi-dimensional, multi-phased, multi-lateral and multi-level approach. This promises new qualities being added to the

[103] Ibid. pp 9 – 10.
[104] Ibid. p. 10.
[105] Ibid. p. 26.

European external action. Instruments are aimed at conflict prevention, working with local, regional and global actors and engaging all players present in a conflict.[106]

Global Strategy sees as a drawback its contemporary military capabilities and therefore calls for deeper integration of defence, in order to be more effective in addressing threats and disputes. "Regarding high-end military capabilities, Member States need all major equipment to respond to external crises and keep Europe safe. This means having full spectrum land, air, space and maritime capabilities, including strategic enablers".[107] In order for the CSDP to become more effective the EU calls for enhancing the deployability and interoperability of Member States' forces. Moreover, the Strategy points to the obstacles in procedural, financial and political spheres which need to be overcome in order to become as effective as possible. But, "at the same time, we must further develop our civilian missions – a trademark of CSDP – by encouraging force generation, speeding up deployment, and providing adequate training based on EU-wide curricula."[108]

When tackling the problem of irregular migration, the Strategy sees great opportunity for CSDP missions to work along with the European Border and Coast Guard, but at first place it needs to focus on preventing people from fleeing their countries, and thus it shall try to tackle the situation because of which people are fleeing their countries. Improvements in this situation might also decrease the appearance of crimes such as smuggling, illicit trade and others.

As mentioned before, the issue of terrorism appears to be of greatest importance for the European Union and is highly securitized within the Strategy. It seems to be justly presupposed, that most of the terrorist threats are coming from fragile states, which are struggling not only with the fight against terrorist, rebel or other armed groups but also

[106] Ibid.
[107] Ibid. p. 45.
[108] Ibid. p. 47.

with corrupted state institutions, ineffective judicial systems and inactive police. People are usually frightened to express their opinion and therefore actively participating civil society is almost non-existent. Resilience in fragile states will be supported by policies contributing to inclusive and accountable governance adhering to the protection of human rights, with the aim of pursuing fight against terrorism, corruption and organised crime. For the governments to regain their accountability, the EU promises to uphold a long-term commitment to civil society.[109]

Figure number 1 showing the number of terrorist attack carried out within EU territory also shows how effective the EU became in arresting suspects. The progress has definitely been made and it seems that the EU is now more capable in unveiling possible threats and arresting suspects before killing more people. Chris Alcantara, however, suggests that the attacks in 2014 and 2015 have been the most fatal terrorist attacks since 2004.[110] Terrorist attacks are now very unpredictable, diversified across Europe and targeting the most vulnerable part of European civilization – civilians. The terrorist groups are now active in smaller cells and this yet becomes the problematic area of interest for the EU – to unveil one cell of terrorist organisation and its so called "lonely wolves" does not guarantee success. The Strategy calls for countering terrorism with deeper intelligence and information sharing and broadening partnerships with civil society, social actors and the private sector alike.[111] In countries of Africa, the EU feels the need to respond to new emerging problems that have cross-border dynamics and by "solving conflicts and promoting

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[109] Ibid.

[110] Alcantara, C. (2016). *45 years of terrorist attacks in Europe, visualized*. [online] Washington Post. Available at: https://www.washingtonpost.com/graphics/world/a-history-of-terrorism-in-europe/ [Accessed 12 December. 2017].

[111] European Union. (2016). *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign And Security Policy*. [pdf] The European Union. Available at: http://www.eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf [Accessed 28 November. 2017].

development and human rights"[112] it seeks to address this threat of terrorism, challenges to demography and migration, too. Essential in this matter is according to the EU building closer links with the African Union, Economic Community of Western African States (ECOWAS), East African Community and the G5 Sahel (EU, 2016).

The Strategy is addressing the most acute problems which are still emerging inside the Union and in the countries of its southern neighbourhood and beyond. The threat of terrorism is perceived as the crucial problem to be addressed although Figure number 1 has shown, it might be only the narratives of EU bodies, and decision-makers that make a great deal of it. I am not trying to say that it is not of any importance. The point that I am trying to make is that building further on its efforts, further deepening intelligence sharing and expanding the cooperation to the global level might be sufficient in combating the threat of terrorism step-by-step.

The EU is finally rethinking its involvement, restructuralising its efforts and rethinking the way of approaching them. If it adheres to the proposed ideas and changes it might help Africa to become a safer place in the upcoming years. In order to draw some inspirations for final conclusions, I will now concern the revised European Neighbourhood Policy from 2015, newly proposed European Consensus on Development (2017) and renewed African-EU Partnership (2017).

Revised European Neighbourhood Policy

The revised ENP was aimed at building more effective partnership with countries in EU's Eastern and Southern neighbourhood. Adopted in 2015, it wants the partnership with neighbourhood countries to be more reflective and respective of their needs. It promises greater flexibility and differentiation taking into account changing environments and circumstances. Going beyond its trade-oriented partnership from the

[112] Ibid. p. 34.

period before new ENP was adopted; the new partnership seeks to have more comprehensive approach for addressing instability across sectors and regions.[113]

Very important element of the reviewed ENP is its focus on involvement of other actors: "The new ENP will now seek to involve other regional actors, beyond the neighbourhood, where appropriate, in addressing regional challenges".[114] As it will be shown later, it might be crucial and beneficial for improvement of the situation in Africa as a whole.

Terrorism seems to be one of the core topics also within this strategy for new neighbourhood policy: "ENP will prioritise tackling terrorism and preventing radicalisation; disrupting serious and organised cross-border crime and corruption; improving judicial cooperation in criminal matters, and fighting cybercrime, in full compliance with the rule of law and international law, including international human rights law".[115]

Regarding the problem of migration, revised ENP calls for cooperation of EU and ENP countries with the aim of addressing the root causes of irregular migration at all critical levels. The EU aspires to intensify cooperation with countries of sub-Saharan and Sahel region on this matter.

European Consensus on Development

As a new framework for development cooperation the European Consensus on Development was adopted in May 2017. Corresponding with UN's Agenda 2030 and EU's Global Strategy it is focused on responding global challenges. This consensus is another expression of

[113] European Commission. (2015). *Review of the European Neighbourhood Policy. Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*. [pdf] Brussels: European Commission. Available at: http://eeas.europa.eu/archives/docs/enp/documents/2015/151118_joint-communication_review-of-the-enp_en.pdf [Accessed 8 December. 2017].
[114] Ibid. p. 3.
[115] Ibid. p. 12.

the EU being self-critical and yet more motivated to provide more differentiated and effective aid to countries in need.

Similarly as the Global Strategy and ENP, it is built for addressing the root causes of irregular migration, but also for improving the length of integration of migrants in host countries as well as it is determined to help them return back home. Several instruments for achieving these goals are mentioned among all: "*promoting investment, trade, and innovation in partner countries to boost growth and employment opportunities, including through the engagement of diasporas, supporting social and education systems as well as working with private sector partners and others to lower the cost of remittances and promote faster, cheaper and safer transfers in both source and recipient countries, thus harnessing their potential for development*."[116]

The ultimate goal of the EU in new consensus for development is the eradication of poverty, by promoting good governance, human and economic development. It is a handbook of guiding principles for the EU's approach. "Strengthening the resilience of states, societies and individuals is central to this approach. It seeks to bring about sustainable development and to accelerate transformation by placing an emphasis on cross-cutting elements of development policy such as gender equality, youth, investment and trade, sustainable energy and climate action, good governance, democracy, rule of law and human rights, and migration and mobility".[117]

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[116] Council of the European Union. (2017). *The New European Consensus on Development. "Our world, our dignity, our future."* p. 17. [pdf] Brussels: Council of the European Union. Available at: http://www.consilium.europa.eu/en/press/press-releases/2017/05/19-european-consensus-on-development/ [Accessed 11 December. 2017].

[117] Consilium.europa.eu. (2017). *The Council adopts a new European Consensus on Development*. [online] Available at: http://www.consilium.europa.eu/en/press/press-releases/2017/05/19-european-consensus-on-development/ [Accessed 12 December. 2017].

The Consensus proposes bigger space for better coherence between the EU and its member states. Meanwhile it also pays attention to setting up more differentiated and tailored approach. According to the research and analysed texts, it seems that the EU came to realization that to leave certain footprints and be successful in cooperation, it also needs to work with civil society. The Consensus promises to incorporate bottom-up approach by involving local citizens, so that these "domestic efforts, tailored to the need and context of each society [can help] to build sustainable democratic states, resilient to external and internal shocks and address the drivers of vulnerability, including inequality".[118]

Impetus for New African-EU Partnership

The 5th Africa-EU Summit in November 2017 offered an opportunity for leaders to respond to changing context and reshape mutual partnerships. This revitalised framework is built on foundations of the Global Strategy, UN's 2030 Agenda, AU's Agenda 2063 and many more.

It proposed deeper involvement in promoting good governance, rule of law, resilient state and it encouraged greater political participation of civil society. "Several countries have been unable to reform and to recover from conflict to the extent or pace necessary and so suffer from fragility. Many countries still face severe constraints on their sustainable economic development and depend heavily on exploiting natural resources" (EC, 2017, p. 4). If the EU will manage to uphold the political relationship with Africa by increasing cooperation on global governance, common interests based on regular interaction but at the same time maintaining its people-centered approach, successes should arrive in the upcoming years.

[118] Council of the European Union. (2017). *The New European Consensus on Development. "Our world, our dignity, our future."* p. 31. [pdf] Brussels: Council of the European Union. Available at: http://www.consilium.europa.eu/en/press/press-releases/2017/05/19-european-consensus-on-development/ [Accessed 11 December. 2017].

For achieving these goals, two guiding objectives are proposed in the renewed Africa-EU Partnership. These are on one hand, building more resilient states and societies and on the other creation of more and better jobs.

We can now, see that stronger and more resilient states are one of the main goals introduced in all of the aforementioned documents. EU institutions will work with African countries, regional and international organisations with the purpose of making these fragile states more responsible. This partnership includes several strategies and policy proposals for fulfilment of this commitment. Among others, preventing conflicts and peacebuilding, strengthening governance systems and rule of law with full compliance to human rights, addressing irregular migration flows and its root causes, supporting transparency of state institutions, building resilience to environmental challenges, and others.[119]

Communication on this Partnership suggests inter-linkages between Libya and Sahel and Horn of Africa are existent and therefore calls for more strategic approach. In combating structural instability and fragility there need to be measures presented and adapted to the trans-border nature of terrorism, violent extremism and organised crime.

Why Africa?

This simple question needs to be answered to comprehend current efforts and excitement of the EU. Firstly, Africa was exploited and colonized by European powers since the late 19th century. This brought the colonial rule, racism and feeling of being superior to the continent. Until 1960's European powers, such as England, Belgium, France, Netherlands, Portugal and others ruled the countries and divided their

[119] European Commission (2017) *Joint Communication to the European Parliament and the Council for a renewed impetus of the Africa-EU Partnership.* [pdf] Brussels: European Commission. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017JC0017 [Accessed 11 December. 2017].

territories at the Berlin Conference (1884-1885).[120] The borders within Africa were created by European powers during this Conference, in most cases they do not correspond with placement of ethnic, national or religious minorities and that I consider to be still feeding the conflicts, disputes and insecurities within the continent.[121]

Secondly, environmental challenges and structural problems such as famine, scarcity of water resources, poverty etc., are way beyond Africa's capabilities and means of addressing. Since African states are quite young (majority has acquired independence only in the second half of 20th century) it is highly improbable that states, which are still not having stable political system and internal structures will be extraordinarily successful in addressing these structural challenges.

Thirdly, speaking about political systems, African states need assistance, partnership upon which they can rely. EU and other regional and international organisations can be reliable partners in helping African states and societies. However, forced imposition of "Western" structures can be more damaging than it might appear. As recent report of International Monetary Fund has shown, neoliberal democracy in African environment does not work and is very much destructive.[122] For this reason, the EU and other stake-holders need to seek a new relationship with African countries in order to bring real changes.

Last but not least, several reports and indices confirm, that Africa is the most critical hotspot of present times. Human Development Index (HDI) by the UN Development Programme, measures quality of life by combining several components. When we look at the countries with Low Human Development, we explore that with the exception of six countries all are African countries (Table 1).

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[120] Nkrumah, K. (1963). *Africa Must Unite*. 1st ed. New York: International Publishers.

[121] Ibid.

[122] Gumede, W. (2016). *The retreat of neoliberalism*. [online] Defenddemocracy.press. Available at: http://www.defenddemocracy.press/the-retreat-of-neoliberalism/ [Accessed 9 December. 2017].

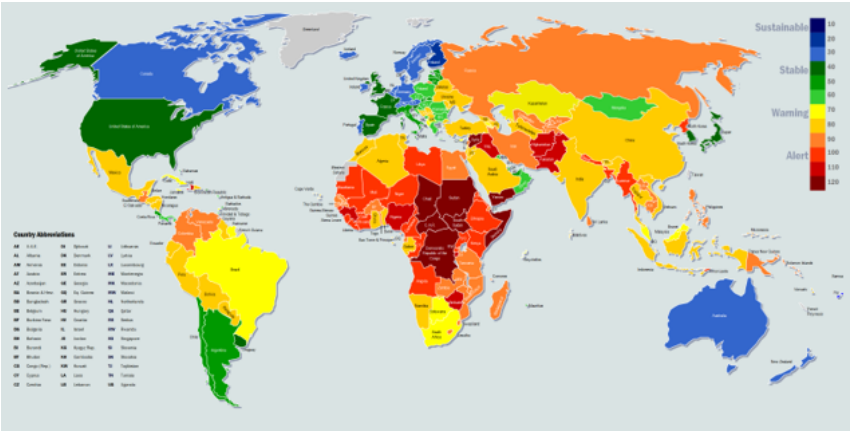
Low Human Development									
Ranking		**1990**	**2000**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
148	**Swaziland**	0,548	0,506	0,526	0,534	0,539	0,541	0,541	0,541
149	Syrian Arab Republic	0,556	0,589	0,646	0,645	0,635	0,575	0,553	0,536
150	**Angola**	..	0,391	0,495	0,508	0,523	0,527	0,531	0,533
151	**Tanzania (United Republic of)**	0,370	0,391	0,498	0,504	0,513	0,512	0,519	0,531
152	**Nigeria**	..	..	0,500	0,507	0,514	0,521	0,525	0,527
153	**Cameroon**	0,444	0,437	0,486	0,496	0,501	0,507	0,514	0,518
154	Papua New Guinea	0,360	0,422	0,494	0,501	0,506	0,511	0,515	0,516
154	**Zimbabwe**	0,499	0,427	0,452	0,464	0,488	0,498	0,507	0,516
156	Solomon Islands	..	0,442	0,497	0,505	0,509	0,512	0,513	0,515
157	**Mauritania**	0,378	0,444	0,487	0,491	0,501	0,509	0,513	0,513
158	**Madagascar**	..	0,456	0,504	0,506	0,508	0,509	0,511	0,512

159	**Rwanda**	0,244	0,332	0,464	0,475	0,485	0,488	0,493	0,498
160	**Comoros**	..	..	0,479	0,484	0,490	0,497	0,498	0,497
160	**Lesotho**	0,493	0,443	0,469	0,479	0,484	0,491	0,495	0,497
162	**Senegal**	0,367	0,381	0,455	0,463	0,474	0,483	0,491	0,494
163	Haiti	0,408	0,443	0,470	0,477	0,483	0,487	0,490	0,493
163	**Uganda**	0,309	0,396	0,477	0,477	0,478	0,483	0,488	0,493
165	**Sudan**	0,331	0,399	0,463	0,468	0,478	0,485	0,488	0,490
166	**Togo**	0,404	0,426	0,457	0,464	0,470	0,475	0,484	0,487
167	**Benin**	0,345	0,395	0,454	0,458	0,466	0,475	0,481	0,485
168	Yemen	0,405	0,444	0,493	0,494	0,498	0,500	0,499	0,482
169	Afghanistan	0,295	0,340	0,454	0,463	0,470	0,476	0,479	0,479
170	**Malawi**	0,325	0,387	0,444	0,454	0,459	0,466	0,473	0,476
171	**Côte d'Ivoire**	0,389	0,395	0,441	0,444	0,452	0,459	0,466	0,474

172	**Djibouti**	..	0,363	0,451	0,460	0,464	0,467	0,470	0,473
173	**Gambia**	0,330	0,384	0,441	0,440	0,445	0,449	0,450	0,452
174	**Ethiopia**	..	0,283	0,411	0,422	0,427	0,435	0,441	0,448
175	**Mali**	0,222	0,297	0,404	0,411	0,421	0,430	0,438	0,442
176	**Congo (DR)**	0,356	0,331	0,398	0,407	0,412	0,419	0,425	0,435
177	**Liberia**	..	0,386	0,406	0,416	0,419	0,425	0,427	0,427
178	**Guinea-Bissau**	..	..	0,410	0,416	0,415	0,419	0,421	0,424
179	**Eritrea**	..	..	0,405	0,410	0,414	0,416	0,418	0,420
179	**Sierra Leone**	0,272	0,302	0,392	0,401	0,413	0,426	0,431	0,420
181	**Mozambique**	0,209	0,298	0,397	0,400	0,405	0,409	0,414	0,418
181	**South Sudan**	..	..	0,429	0,419	0,417	0,421	0,421	0,418
183	**Guinea**	0,271	0,322	0,385	0,396	0,406	0,412	0,414	0,414
184	**Burundi**	0,270	0,268	0,385	0,393	0,398	0,404	0,406	0,404

185	**Burkina Faso**	..	..	0,377	0,384	0,391	0,398	0,399	0,402
186	**Chad**	..	0,300	0,370	0,381	0,387	0,390	0,394	0,396
187	**Niger**	0,212	0,255	0,323	0,331	0,341	0,345	0,351	0,353
188	**Central African Republic**	0,320	0,314	0,361	0,366	0,370	0,345	0,347	0,352

Table 1: Countries with Low Human Development. Source: UNDP (*http://hdr.undp.org/en/composite/trends)*



Fragile State Index (FSI), aggregated by the Fund For Peace, evaluates countries in accordance with 12 conflict risk indicators combining economic, political and social indicators. Looking at the results of last evaluation on map above we again see that the most critical area, with the highest number of fragile states is sub-Saharan Africa and Great Lakes region. States with the highest fragility are marked with dark red

colour and following are considered to be of crucial importance to the security within the continent: Chad, Sudan, South Sudan, Central African Republic, Democratic Republic of Congo, Somalia, Nigeria, Ethiopia and Guinea. Apparently, in HDI and FSI evaluations, most of the states overlap and we can confirm the need for assistance and severity of structural challenges within these countries.[123]

The Implications of Summit Declarations

From Table 2, we can make general conclusions on whether there has been a significant change/shift in the objectives of the EU-AU partnership. The quantitative content analysis is focused purely on the counting of certain expressions that have been identified as the issues appearing in the documents of EUGS, European Consensus on Development and the Impetus for New African-EU Partnership as the most visible ones. Those that have been the most discussed ones and apparently often securitized ones. From the rhetoric of all of the aforementioned documents, I have identified that terrorism, migration (not always necessarily perceived as mutually influenced phenomena), peace and security, human rights, youth, employment and SMEs (small and medium-size enterprises) are the top occurring factors/issues/problems/phenomena approached.

The EUGS as the main blueprint for all of the actions undertaken by the CFSP and CSDP appears in the table as the stepping stone for comparison of the 4th Summit and 5th Summit outcome.

As we can see, terrorism is still one of the issue that is high on the agenda of the EU. It is considered to be interconnected with other relevant issues such as migration, peace and security, and of course, human rights. But as we have discussed above, the importance of the threat of terrorism should not be securitized as it is currently. Figure 1, but most implicitly, figure 2 shows us the actual number of attacks in

[123] The Fund for Peace, (2016). *Fragile States Index 2016*. [online] Available at: http://library.fundforpeace.org/fsi16-report [Accessed 11 December. 2017].

comparison with the suspects being arrested by the EU. While the number of terrorist attacks stagnated, the number of arrested suspects has increased significantly during the period of the biggest influx of refugees. Thus, we can conclude that with the increasing number of migrants coming into the EU from Africa the potential threat of terrorist attacks has not increased similarly.

When we compare the number of times the word "migration" appeared in these documents, we can conclude that the migration crisis, starting in the Fall of 2014 had considerable impact on the evolution of the relations between the EU and Africa. The 4th AU-EU Summit has taken place beforehand the migration crisis, in April 2014, in Brussels, whereas the 5th AU-EU Summit has taken place after the biggest influx of refugees and migrants came to the EU. The EUGS and other two documents have been written mostly as a response to the happenings during the crisis. We see, that the number has more than doubled since the 4th summit meeting and therefore the migration could be still perceived as the issue on top of the agenda of the EU's foreign and security policy.

Similarly, has the problem of "peace" appeared more often than previously. We can consider that the evolution and escalation of many African internal conflicts, noticeably those in the Sahel region has led to increased attention to threats to (not only European, but also) international peace and security. Before mentioned strengthening of military capabilities and battle groups deployment is explanation to the question of how is the EU planning on responding to such crises.

In the following part we are arriving to the explanation of the persistence of the EU as the soft power. Although the word combination "human rights" has not appeared more often in the last summit declaration, we can still perceive the EU as the world's (probably first) soft power for multiple reasons. Firstly, the issues of human rights, gender and others are still on the agenda of civilian missions carried out outside the EU borders. Secondly, military capabilities and battlegroups' deployment however strengthened is still

not reaching the level of impact of the various civilian missions. Thirdly, when we look at the row below, we can see that the importance of youth (and most significantly youth employment) has been gained.

I consider that to be the biggest change and shift in the EU's foreign policy making. It is also the answer to the research questions of how has the objective for CFSP and CSDP changed between last two summits. As it is also argued in the EUGS, the EU (as other actors including for instance the UN) is focused on addressing the problems in their roots. This in reality means, e.g. that in addition to strengthening measures on border security and combatting smuggling in Libya, the EU will now also address properly the crises at, which is the reason why people are seeking refuge in the EU, at their roots in different parts of Africa. It seems that the EU together with its partners in the AU has identified the problem to be the refuge seekers and migrants in the productive age. As a solution to these problems, the EU is proposing with the AU a platform with empowered encouragement for youth employment and SMEs (small and medium sized enterprises). This is the soft power that the EU has been offering and sharing and that upholds her still among the most valuable partners for Africa.

Table 2: *Counts on expressions that have been identified as the issues appearing the most*

Word excercised	**EUGS (60 pages), 2016**	**4th Summit (15 pages), 2014**	**5th Summit (13 pages), 2017**
Terrorism	31	1	3
Migration	26	7	19
Peace	47	18	28
Security	136	32	26

Human Rights	31	12	8
Youth	4	4	20
Employment	3	2	5
SMEs (small and medium sized enterprises)	1	3	1

Conclusion

It is now clear what objectives does the EU pursue in its involvement outside its territory. The EU still remains a soft power actor in international affairs and wants its neighbourhood to become more resilient, cooperative and secure space for its citizens. Despite combating terrorism and management of migration crises being of utmost importance to the Union, the objectives have changed mostly in the attitude towards solutions of such problems.

The EUGS as well as its accompanying documents mentioned before are focused on preventive and long-term solutions in arena of peacebuilding and conflict management, building stronger civil societies, supporting the rule of law, adherence to the norms of international law, rebuilding fragile states with the help of good governance principles and averting corruption. The EU also clearly expressed the desire and motivation to focus primarily on bilateral debates, case-by-case solutions and addressing the root causes of structural problems. Apart from the hard power means and practices, the soft power tools that the EU uses persist to be her strongest and most effective tool.

The biggest change can be observed in the objective of how to approach these problems. Whereas the EU used to be eager to help and provide

finances and it capacities (mostly in people) it is now affirmed to offer solutions in the area of education of youth and investment in the functioning of SMEs based in Africa. We will only have to wait to see whether this will be the best fitting solution to both EU's and AU's external and internal threats and vulnerabilities.

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THE EUROPEAN UNION CITIZENSHIP CASE LAW - TOWARDS EFFICIENT RIGHTS FOR THE UNION CITIZEN?

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Abstract

The paper is focused on analysis of the free movement of person in the European Union, especially on its development in the case law of the Court of Justice of the European Union. The basis for the analysis is the shifting interpretation from the wide and active approach of the Court at the beginning up to current restrictive interpretation. The shift may be influenced by the implementation of internal and external EU policies, we consider as the basic factor of free movement limitation the current migration in-out flows.

Key words: EU citizenship, case law, migration, efficient rights, fundamental freedom

Initial steps in EU citizenship and its interpretation

The European Union citizenship was founded as one of the key element of political integration in 1993, within the Treaty on European Union. The free movement of persons became integral part of rights guaranteed within the EU citizenship concept and considered as one of the fundamental freedoms in the European Union single market. Therefore the current situation regarding restrictive approach in exercising freedom of movement, which use to be interpreted by the Court of Justice of the EU in a wider context, arguing that it has been a core feature of European integration, may be considered as change of constant judicial approach to interpretation of EU citizenship concept.

The Union citizenship case law of the CJEU has always been directed towards efficient rights for the Union citizen and aiming at eliminating differences between the economically active and the non-economically

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active. It is cleary visible in several cases. In case C-184/99 Grzelczyk, the Court has found that „a declaration by the student that she has sufficient funds must be accepted as adequate proof of this – authorities may not demand bank records or other documents.“[125] The Court also confirmed, that „if a student makes the declaration in good faith but later in the course falls on hard times and runs out of money, she seems to be entitled to social assistance on the same terms as national students.“[126]

The Court in Grzelczyk used interpreattion of Treaty articles on education based on the clause on general prohibition of discrimination. As conclued by the Court, foreign EU students may not be charged more than national ones. The important issue is education, which the Court confirmed as the part of the preparation for work and thus concluded as it is integral part of free movement of persons. Based on similar foundation az in Grzelczyk, the Court confirmed its more liberal interpretation as in Gravier. In this case the Court had stated, that any course that prepare individual for employment is considered as vocational training. In point 24 of the judgment, the Court ruled: „access to vocational training is in particular likely to promote free movement of persons throughout the community, by enabling them to obtain a qualification in the member state where they intend to work and by enabling them to complete their training and develop their particular talents in the member state whose vocational training programmes include the special subject desired.“[127]

The concept of free movement connected to citizenship and the active approach of the Court of Justice continued also in C-209/03 Bidarregarding students' right to welfare benefits in the host state. The

[125] Judgment C-184/99, Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve, online: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61999CJ0184&from=EN

[126] Grzelczyk, detto

[127] Judgment in case 293/93 Francois Gravier v City of Liege, online: http://curia.europa.eu/juris/celex.jsf?celex=61983CJ0293&lang1=en&type=TXT&ancre=

Court ruled, that the relevant treaty artciel (A12 TEC) „must be interpreted as precluding national legislation which grants students the right to assistance covering their maintenance costs only if they are settled in the host Member State, while precluding a national of another Member State from obtaining the status of settled person as a student even if that national is lawfully resident and has received a substantial part of his secondary education in the host Member State and has consequently established a genuine link with the society of that State.“[128] In this sense, there was already visible first insight, that the member states may request the settlement and genuine connection to host state, for proper implementaiton of non-discrimination principle in relation to free movement of persons.

This criteria became more and more important in the next years, as the Union citizenship is under question of its founding concept and this is also reflected in case law of the CJEU, especially visible since the crises the EU faced (financial crisis in 2008-2010) and has facing in connection to migration flows (especially since 2013-2014). In the next analysis we will deal with the recent decisions of the CJEU, connected to EU citizenship when connected to external relations, migration and host state obligations.

Shift in EU citizenship concept – from efficient exercise of free movement to restrictiveness

The Union citizenship is guaranteed by Articles 20-25 TFEU regarding the creation of the concept of Union citizenship and Article 79 TFEU on rights of non-EU citizens. The relevant secondary legislation focusing on EU laws on non-EU citizens are Directive 2003/86/EC on the right of family reunification and Directive 2003/109/EC on rights of long term residents the EU's citizens' Directive (the main secondary legislation regarding the right to free movement of citizens – directive 2004/38/EC of the European Parliament and of the Council of 29 April

[128] Judgment C-209/03 Dany Bidar v London Borough of Ealing and Secretary of State for Education and Skills. Online: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62003CJ0209&from=EN

2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC).

In 2014, the CJEU had adopted judgment in case C-333/13 Dano, concerning access to social welfare benefits by EU citizens who move to another Member State. The Court's approach to the issues in this case is stricter than before, while referring to existing sensitive political debate on the free movement of EU citizens. The Court in its decision had ruled: „Articles 6 and 8 of the EC Treaty (now, after amendment, Articles 12 EC and 17 EC) preclude entitlement to a non-contributory social benefit, such as the minimex, from being made conditional, in the case of nationals of Member States other than the host State where they are legally resident, on their falling within the scope of Regulation No 1612/68 of the Council of 15 October 1968 on the freedom of movement for workers within the Community when no such condition applies to nationals of the host Member State.“ [129]

Another CJEU's judgment in case C-67/14 Jobcenter Berlin Neukölln against Nazifa Alimanovic and others, concerns a Swedish woman and her daughter who had worked in Germany for a short period of time and then lost their jobs. They sought a particular benefit in Germany, and the national court asked the CJEU if they were entitled to it. The Court had decided in preliminary ruling, as stated in points 56-58 of judgment: "As regards the question whether a right of residence under Directive 2004/38 might be established on the basis of Article 14(4)(b) thereof for Union citizens in the situation of Ms Alimanovic and her daughter Sonita, that provision stipulates that Union citizens who have entered the territory of the host Member State in order to seek employment may not be expelled for as long as they can provide

[129] Judgment C-333/13 Elisabeta Dano and Florin Dano v Jobcenter Leipzig. Online: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62013CJ0333&from=EN

evidence that they are continuing to seek employment and that they have a genuine chance of being engaged. Although, according to the referring court, Ms Alimanovic and her daughter Sonita may rely on that provision to establish a right of residence even after the expiry of the period referred to in Article 7(3)(c) of Directive 2004/38, for a period, covered by Article 14(4)(b) thereof, which entitles them to equal treatment with the nationals of the host Member State so far as access to social assistance is concerned, it must nevertheless be observed that, in such a case, the host Member State may rely on the derogation in Article 24(2) of that directive in order not to grant that citizen the social assistance sought. It follows from the express reference in Article 24(2) of Directive 2004/38 to Article 14(4)(b) thereof that the host Member State may refuse to grant any social assistance to a Union citizen whose right of residence is based solely on that latter provision."[130] According to this it is clearly visible, that national states are becoming of having more extensive competences in exercising free movement of people and connected social welfare benefits.

Within the following judgment in case C-308/14 European Commission against United Kingdom of Great Britain and Northern Ireland on restricting the export of child care benefits from the UK, the Court ruled on comptence of national authorities to require from EU citizens from other member states to lawfully reside in host state to exercise social benefits on non-discriminatory basis, i.e. as stated in point 86 of the judgment: „under the national legislation at issue in the present action, for the purpose of granting the social benefits at issue the competent United Kingdom authorities are to require that the residence in their territory of nationals of other Member States who claim such

[130] Judgment C-67/14, Jobcenter Berlin Neukölln against Nazifa Alimanovic and others. Online: http://curia.europa.eu/juris/celex.jsf?celex=62014CJ0067&lang1=sk&type=TXT&ancre=

benefits must be lawful does not amount to discrimination prohibited under Article 4 of Regulation No 883/2004.“ [131]

To prove continuing development of case law of CJEU, there are for cases the Court had decided in last year (2017) and are connected to EU citizenship and exercising of free movement of persons as its integral part. We will focus mainly on identification of the shif as well as the factor relevant to it.

In case C-442/16 Florea Gusa against Minister for Social Protection and others the Court mainly focus on the social welfare provided in host state to self-employed persons after the termination of their work and changing status to work-seeker, more generally on application of directive 2004/38/EC. The Court ruled in this issue, that „Article 7(3)(b) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ..... must be interpreted as meaning that a national of a Member State retains the status of self-employed person for the purposes of Article 7(1)(a) of that directive where, after having lawfully resided in and worked as a self-employed person in another Member State for approximately four years, that national has ceased that activity, because of a duly recorded absence of work owing to reasons beyond his control, and has registered as a jobseeker with the relevant employment office of the latter Member State.“[132]

[131] Judgment C-308/14, European Commission against United Kingdom of Great Britain and Northern Ireland. Online: http://curia.europa.eu/juris/celex.jsf?celex=62014CJ0308&lang1=sk&type=TXT&ancre=

[132] Judgment C-442/16, Florea Gusa against Minister for Social Protection and others. Online: http://curia.europa.eu/juris/celex.jsf?celex=62016CJ0442&lang1=sk&type=TXT&ancre=

In another case C-194/16 Ovidiu-Mihaita Petrea against Ypourgou Esoterikon kai Dioikitikis Anasygrotisis, the Court dealt with more sensitive issue from the point of possible security threat. The case was connected to proper implementation of directive 2004/38/EC and directive 2008/115/EC and the right of residence of citizen in host state while there exist a ban on entrance to territory of host state. In the case the Court ruled: „Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and the protection of legitimate expectations do not preclude a Member State from, first, withdrawing a registration certificate wrongly issued to an EU citizen who was still subject to an exclusion order, and, secondly, adopting a removal order against him based on the sole finding that the exclusion order was still valid.“ [133]

As stated in the point 2 of the judgement in relation to both claimed directives: „Directive 2004/38 and Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals do not preclude a decision to return an EU citizen, such as that at issue in the main proceedings, from being adopted by the same authorities and according to the same procedure as a decision to return a third-country national staying illegally referred to in Article 6(1) of Directive 2008/115, provided that the transposition measures of Directive 2004/38 which are more favourable to that EU citizen are applied.“[134] The principle of non-discrimination was involved in decision-making and make no difference or double standards in relation to national authorities discretion.

[133] Judgment C-194/16 Ovidiu-Mihaita Petrea against Ypourgou Esoterikon kai Dioikitikis Anasygrotisis. Online: http://curia.europa.eu/juris/celex.jsf?celex=62016CJ0184&lang1=sk&type=TXT&ancre=

[134] Petrea, detto

The double citizenship use to be also under discussion in general international implementation practice, mainly from the point of existing double obligations to national state. In case of the C – 165/16 Toufik Lounes proti Secretary of State for the Home Department, the Court faced question on EU citizen, who obtained citizenship of host state while taking also citizenship of national state, together with quesiton on family member of that EU citizen. In relation to implementation of directive 2004/38/EC, the Court had ruled: „Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States must be interpreted as meaning that, in a situation in which a citizen of the European Union (i) has exercised his freedom of movement by moving to and residing in a Member State other than that of which he is a national, under Article 7(1) or Article 16(1) of that directive, (ii) has then acquired the nationality of that Member State, while also retaining his nationality of origin, and (iii) several years later, has married a third-country national with whom he continues to reside in that Member State, that third-country national does not have a derived right of residence in the Member State in question on the basis of Directive 2004/38. The third-country national is however eligible for a derived right of residence under Article 21(1) TFEU, on conditions which must not be stricter than those provided for by Directive 2004/38 for the grant of such a right to a third-country national who is a family member of a Union citizen who has exercised his right of freedom of movement by settling in a Member State other than the Member State of which he is a national.“ [135]

The case C-133/15 H.C. Chavez-Vilchez and others against Raad van bestuur van de Sociale verzekeringsbank and others was dealing with the implementation of article 20 TFEU and the issue of effective

[135] Judgment C-165/16, Toufik Lounes proti Secretary of State for the Home Department. Online: http://curia.europa.eu/juris/celex.jsf?celex=62016CJ0165&lang1=sk&type=TXT&ancre=

exercise of citizens rights in case of child, whose one parent is third country national under the threat of expatriation. The Court had ruled: „Article 20 TFEU must be interpreted as meaning that for the purposes of assessing whether a child who is a citizen of the European Union would be compelled to leave the territory of the European Union as a whole and thereby deprived of the genuine enjoyment of the substance of the rights conferred on him by that article if the child's third-country national parent were refused a right of residence in the Member State concerned, the fact that the other parent, who is a Union citizen, is actually able and willing to assume sole responsibility for the primary day-to-day care of the child is a relevant factor, but it is not in itself a sufficient ground for a conclusion that there is not, between the third-country national parent and the child, such a relationship of dependency that the child would indeed be so compelled were there to be such a refusal of a right of residence. Such an assessment must take into account, in the best interests of the child concerned, all the specific circumstances, including the age of the child, the child's physical and emotional development, the extent of his emotional ties both to the Union citizen parent and to the third-country national parent, and the risks which separation from the latter might entail for the child's equilibrium" .... and simultaneously „Article 20 TFEU must be interpreted as not precluding a Member State from providing that the right of residence in its territory of a third-country national, who is a parent of a minor child that is a national of that Member State and who is responsible for the primary day-to-day care of that child, is subject to the requirement that the third-country national must provide evidence to prove that a refusal of a right of residence to the third-country national parent would deprive the child of the genuine enjoyment of the substance of the rights pertaining to the child's status as a Union citizen, by obliging the child to leave the territory of the European Union, as a whole. It is however for the competent authorities of the Member State concerned to undertake, on the basis of the evidence provided by the third-country national, the necessary enquiries in order

to be able to assess, in the light of all the specific circumstances, whether a refusal would have such consequences.“ [136]

In this decision we can again see important shift as in Zhu and Chen case (case C-200/02 Kunquian Catherine Zhu and Man Lavette Chen against Secretary of State for the Home Department), in which the Court had ruled, that in the best interest of child there is necessary, that also parent, third country national has to have access to child and child as EU citizen has efficient approach to exericising his/her rights within the territory of the Union, withouf facing threat of expatriation from the territory of EU.

Conclusion

The recent restrictive case law from the CJEU on host state obligations based on Union citizenship in cases as above-mentioned for last three years period, are definitely shifted understanding of efficient rights exercising more to secure exercising, with margin of appreciation given back to states, its national authorities and courts.

And what are the factors, which influence the shift? As far as visible from cases connected to EU citizenship and free movement of persons within the EU, there is mainly factor of internal security and discretion of state authorities. This divergence of decision-making and over-ruling of CJEU case law make the Union again more closed then open and the fundamental benefit of free movement of persons related to EU competitiveness in world market is definitely touched.

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[136] Judgment C-133/15, H.C. Chavez-Vilchez and otehrs against Raad van bestuur van de Sociale verzekeringsbank and others. Online: http://curia.europa.eu/juris/celex.jsf?celex=62015CJ0133&lang1=sk&type=TXT&ancre=

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Judgment C-209/03 Dany Bidar v London Borough of Ealing and Secretary of State for Education and Skills. Online: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62003CJ0209&from=EN

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UNESCO´S APPROACH TO ACHIEVE THE SDG 4: QUALITY EDUCATION

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Abstract

The aim of the paper is to illustrate the need for new pedagogical and teaching approaches in the modern globalised world and the role of eduaction that continues building a sense of common humanity and respect of human rights among young people. The two UNESCO´s concepts, namely the *Global Citizenship Education* and the *Education for Sustainable Development Goals* are introduced in more details. There is a reference to the collaboration between the UNESCO and the EU. A short overview on how these concepts are incorporated in the document *National Strategy on Global Education* in Slovakia forms a part of the paper, too.

Key words: UNESCO, education, human rights, citizenship, globality

Introduction

The UNESCO has been promoting Education for Sustainable Development (ESD) since 1992. It led the UN Decade for ESD from 2005 to 2014 and is now spearheading its follow-up, the ***Global Action Programme*** (GAP).

On 25 September 2015 the UN General Assembly adopted the ***2030 Agenda for Sustainable Development.*** This new global framework to redirect humanity towards a sustainable path was developed following the *United Nations Conference on Sustainable Development* (Rio+20) in Rio de Janeiro in Brazil in June 2012. At the core of 2030 Agenda are 17 Sustainalbe Development Goals (SDGs). The universal, transformational and inclusive SDGs describe major development challenges for humanity.

UNESCO and Education

Education is explicitly formulated as a stand-alone-goal – Sustainable Development Goal 4. Education is both a goal in itself and a means for attaining all the other SDGs. As stated in the *UNESCO´s Education Sector Programme for the period 2014-2021,* education is not only an integral part of sustainable development, but also a key enabler for it.

Global issues urgently require a shift in our lifestyles and transformation of the way we think and act. Global problems we are facing recently require a coordinated approach of all countries, because one country is not capable to solve these problems by itself. Therefore it is important to make the people aware, that we all are part of global community.

Education has the responsibility to make individuals to sustainability change-makers with developed competencies to reflect on their own actions, taking into account their current and future social, cultural, economic and enviromental impacts, from a local to a global perspective.[137]

An increasingly globalised world raises questions about what constitutes a meaningful citizenship. Growing interest in global citizenship has resulted in increased attention to the global dimension in citizenship education.

A normative basis for the UNESCO´s concept of the Global Citizenship Education (GCE) is contained in the *UNESCO´s 1974 Recommendation concerning education for international understanding, co-operation, peace and education relating to human rights and fundamental freedoms,* reflecting the idea of nurturing respect for all, building a sense to a common humanity and helping learners become responsible and active global citizens.

[137] Education for Sustainable Development Goals – Learning Objectives, Education 2030, Paris, UNESCO 2017, p. 6-8.

The Global Citizenship Education (GCE) and the **Education for Sustainable Development (ESD)** are recognized as mutually reinforcing approaches, with commonalities and specificities. Both prioritize the relevance and content of education in order to ensure that education helps build a peaceful and sustainable world. Both follow common values, such as non-discrimination, equality, respect and dialogue, on the other side they have different agendas, discourses and international policy frameworks. They also have distinct thematic areas of focus and as a result partly different stakeholders groups.

Both concepts have to be understood as an integral part of quality education in all educational institutions – from preschool to tertiary education. The GCE as well as the ESD are based on and include aspects from all three domains of learning: cognitive, socio-emotional and behavioural.

- The *cognitive domain* comprises knowledge and thinking skills necessary to better understand the main ideas of both of the mentioned concepts.
- The *socio-emotional domain* includes social skills that enable learners to collaborate, negotiate and communicate in order to achieve common values, attitudes and motivations.
- The *behavioural domain* decribes action competencies.[138]

The role of teachers in education process

The Third UNESCO Forum on GCE (opened on 8 March 2017) brought together experts, practitioners and policymakers to examine pedagogical approaches and teaching practices and to ensure that practical change is brought into classrooms.

[138] Global Citizenship Education – Topics and Learning Objectives, Paris, UNESCO 2015, p. 14-16 (available at: http://unesdoc.unesco.org/images/0023/002329/232993e.pdf)

In a world with growing manifestations of intolerance, it is crucial that educational systems equip students with values, knowledge, and skills that instill a respect for human rights. The role of qualified and well-prepared teachers is crucial, as they are not only the transmitters of knowledge and information. With an appropriate approach to learners, they also develop their soft-skills, empathy and the feeling to be part of a global world.

GCE identifies three learner attributes, which refer to the traits and qualities that global citizenship education aims to develop in learners and correspond to the key learning outcomes mentioned earlier. These are: *informed and critically literate*; *socially connected* and *respectful of diversity; ethically responsible and engaged*. The three learner attributes draw on a review of the literature and of citizenship education conceptual frameworks, a review of approaches and curricula, as well as technical consultations and recent work by UNESCO on global citizenship education.[139]

In order to create inclusive environments for effective learning, teachers can use various approaches. The classroom can be arranged to allow learners to work collaboratively in small groups and with the aim of the teacher to identify relevant resources. As one of positive approaches to learners is also a possibility to display the results of learners´ work in the classroom.[140]

Another method often used in classrooms is a project-based learning as a strategy for developing global skills. This pedagogical technique can be utilized in the case of almost any school project and is considered as a primary pedagogical strategy in the discourse of global competencies. Another important pedagogical feature is learning through communicative practices outside the classroom. As many teachers state, if students are encouraged to see themselves in the position of

[139] Global Citizenship Education – Topics and Learning Objectives, Paris, UNESCO 2015, p. 51-52
[140] Ibid. p. 23-24

policymakers or of relevant stakeholders, they much more easily acquire requested knowledge and skills.[141]

In order to be able to know what are the core areas of learning and if learners are successfully learning, a comprehensive assessment and evaluation plan is needed. The approach taken will depend on the context, as different education systems take different approaches to assessment and evaluation of learning. It will also depend on how concepts of the GCE and the ESD will be delivered, either across the curriculum or within a specific subject(s) or another modality.

As recommended in the UNESCO guidelines, teachers can consider the broader purposes of assessment and go beyond the exclusive use of the **assessment of learning** to include **assessment for learning** and **assessment as learning**. This is of particular importance as they are engaged in an area of education with wide-ranging transformative purposes. Current practice suggests that teachers are using a mix of traditional methods of assessment and of more reflective and performance-based methods, such a self-assessment and peer assessment, that capture learners insight on. Assessment practices aim to assess both personal integration and social awareness. As part of assessment teachers provide learners with descriptive feedback that guides them towards improvement.[142]

The UNESCO and the European Union Partnership

On 8 October 2012 UNESCO and the European Union signed a ***Memorandum of Understanding*** with a view to enhance the dialogue, strengthen cooperation and foster an exchange of best practices. The partnership agreement builds on a long-lasting cooperation between the

[141] Catalano, T., 2013. Occupy: A case illustration of social movements in global citizenship education *(*available at: https://en.wikipedia.org/wiki/Global_citizenship_education

[142] Global Citizenship Education – Topics and Learning Objectives, UNESCO 2015, p. 56-57

UNESCO and the EU. The collaboration covers dimensions such as support to education, cultural diversity, science and youth.

The Committee on Culture and Education of the European Parliament welcomes the EU-UNESCO Memorandum of Understanding and the subsequent increased cooperation between the two parties. The Committee is of the opinion that in order to strengthen cooperation, there is a need to go beyond financial assistance and joint project management by enhancing partnerships in the field of education and culture in a long-term perspective. It calls, therefore, for the establishment of a high-level annual strategic dialogue with the aim of tackling common challenges in a more sustainable way and encourages efforts of the Commission to enhance the role of science and research cooperation as soft-power tolls in European external relations.[143]

According to the information published by the EU, the EU's voluntary funding represents the 3rd largest extra-budgetary funding source for UNESCO. In 2015 the portfolio of 47 worldwide EU-funded projects represented 89.3 million USD across all UNESCO sectors. The EU is supporting a number of UNESCO worldwide.[144]

Examples of agreements concluded (December 2015-March 2016):

- Central African World Heritage Forest Initiative – CAWHFI II (EUR 5,000,000)
- Building trust in media in South East Europe (EUR 1,650,000)
- UNESCO cultural world heritage sites in Europe (EUR 1,666,667)

[143] Opinion of the Committee on Culture and Education for the Committee on Foreign Affairs on the implementation of the Common Foreign and Security Policy, European Parliament, 27 April 2016 (available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0360+0+DOC+XML+V0//EN&language=el#title4)

[144] The UNESCO and the EU, European Union- External Action, 12.5.2016 (available at: https://eeas.europa.eu/headquarters/headquarters-homepage/12347/unesco-and-eu_en)

- The Holocaust in Contemporary Education European Curricula, Textbooks and Pupils' Perceptions in Comparison (EUR 215,152)

- Promoting the Contribution of World Heritage for Sustainable Development and Reinforcing Capacities for Protection and Conservation of Paleontological Sites in Ethiopia (EUR 400,000)

- Skills and Technical Education Programme (STEP) in Malawi (EUR 9,000,000). [145]

The Slovak National Strategy on Global Education for 2012-2016

The Slovak National Strategy on Global Education for 2012-2016 (hereinafter reffered as „the Strategy“) was agreed by the Slovak Government on 18 January 2012. The adoption of this Strategy was a very significant achievement by the stakeholders in Slovakia. It identifies a broad range of initiatives that are undertaken, or planned under the Strategy, and identifies a number of challenges and opportunities.

The creation of the Strategy was innitiated by the Ministry of Foreign and European Affairs (hereinafter reffered as „MFEA“) together with the Ministry of Education, Science, Research and Sport of the Slovak Republic.

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[145] UNESCO - European Union Partnership, UNESCO 2016 (available at: https://en.unesco.org/UNESCO-EU-Partnership)
UNESCO is also participating as partner in various projects funded under the Horizon 2020 Programme of the Directorate General for Research and innovation, including:

- FREEWAT - FREE and open source software tools for WATer resource management
- AtlantOS - Optimizing and Enhancing the Integrated Atlantic Ocean Observing System
- ECOPOTENTIAL - Improving future ecosystem benefits through earth observations
- AQUACROSS - Knowledge, Assessment, and Management for AQUAtic Biodiversity and Ecosystem Services aCROSS EU policies
- PERFORM - Participatory Engagement with Scientific and Technological Research through Performance

The main goal of the Strategy for is to ensure that citizens of Slovakia have access to information about global problems; problems faced by developing countries. And that these motivate them to actively approach such issues and seek out solutions.[146]

The strategy then goes on, in a very clear and precise fashion, to list eight partial goals or

Objectives of Global Education (GE):

2.1. Incorporation of goals, topics, principles of (GE) into state education programmes.
2.2. Continuous training of teaching staff to reflect the principles, objectives and GE
topics. And to develop knowledge, skills and attitudes necessary for teachers to integrate
GE into teaching.
2.3. Preparation of future teachers at pedagogical faculties to better represent GE principles,
goals and topics and to develop the knowledge, skills and attitudes of future teachers
necessary for incorporation of GE goals into the education process.
2.4. Incorporation of GE topics to non-curricular activities of education programmes
on school campuses.
2.5. To create the conditions for incorporation of development topics to study
programmes of non-pedagogical faculties.
2.6. Support of science and research at universities in the development cooperation field.
2.7. Support of informal education of youth in the field of global topics.

[146] The Slovak National Strategy on Global Education for 2012-2016, Section 2 (available at: https://www.mzv.sk/documents/30297/2649510/National+Strategy+for+Global+Education+for+2012+-+2016)

2.8. Ensure public access for public servants, politicians and the media to be able to inform the public on global issues and problems faced by developing countries so as to be able to take a proactive approach when dealing with these issues.

The Strategy provides a very comprehensive and ambitious list of goals for the stakeholders. The strategy is accompanied by a detailed Action Plan, which identifies tasks and which stakeholders should be responsible for facilitating these tasks. The tasks in the Action Plan largely follow the above eight objectives.[147]

Conclusion

Although there are no globally agreed indicators for monitoring the GCE and the ESD learning outcomes yet, it is expected that a proposed measurement framework and potential indicators will be available soon. A number of surveys exist which attempt to assess the outcomes in different settings and UNESCO is contributing to these efforts by commissioning research that will be used to develop evidence-based proposals on potential indicators and considerations for data collection.[148]

It is important to recognise that teachers can only deliver effective learning, if they have the support and commitment of head teachers, communities and parents, if the educational system allows new teaching approaches providing schools with adequate time and resources.

Having a quick look at the situation in Slovakia on global education a significant progress is notable, from a series of isolated projects to a focus on system-wide reform. It is evident that this crucial document is comparatively of high quality, and is nationally realisable, given the

[147] The European Global Education Peer Review Process - National Report on Global Education in Slovakia, GENE Amsterdam 2013, p. 43-44 (available at: http://gene.eu/wp-content/uploads/Gene_NationalReport-Slovakia.pdf

[148] Global Citizenship Education – Topics and Learning Objectives, UNESCO 2015, p. 57.

quality of engagement of the key stakeholders and the leadership of the relevant Ministries. Nevertheless, the main challenge for the stakeholders in Slovakia now is how to ensure its implementation.[149]

It is to be believed that the continuous training of teaching staff and of other relevant stakeholders will contribute to better integration of the principles of the concepts of the GCE and the ESD into teaching process not only in Slovakia, but worldwide.

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BETWEEN THE DUTY TO PROTECT AND THE RIGHT TO DECIDE UPON IMMIGRATION POLICIES: THE CASE OF FOREIGN MINORS[150]

Clarissa do Nascimento Tabosa

Abstract

Migrant children. These two terms when put together seem almost contradictory. While on one hand children are seen as vulnerable and in need of protection, migration is many times treated under the terms of illegality. On one hand, there is a wide consensus upon the fact that children are to be protected and to be given specific rights, this has emanated to a great extent from the international level. On the other hand, this consensus seems to fade when the child in question has a migration background. In these cases, states tend to place national immigration laws above international commitments to protect the children. The paper addresses this paradoxical issue by looking at the case of Germany, which has a great number third-country nationals below the age of 18 living in its territory and which has also committed to the main international and regional agreements that address directly, or indirectly, the case of migrant children.

Keywords: European Union, Germany, international human rights' law, migrant children, UNCRC.

Introduction

The existing consensus over the fact children are to be protected seems to fade when the child in question has a migration background. In these situations, states tend to place national immigration laws above international commitments to protect the children. This may raise questions about the domestic implementation of international human rights treaties.

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The majority of legal provisions on rights of child emanate from the international level and are then implemented in the national realm requiring, many times, that states take further measures in ensuring the correct implementation of international provisions by making legislative changes. Immigration policies are adopted in an opposite manner. There is a much less direct influence of international bodies in immigration policies because it is still seen as a matter very connected to states sovereignty and a matter to be decided in the national realm. In fact, there no international treaty on migration, although we have important conventions that deal with refugees' rights. If human rights treaties implementation, in general, face problems related to domestic implementation, international human rights treaties that, even indirectly, address immigration issues are expected to face even deeper problems connected to domestic implementation.

The paper addresses this paradoxical issue of the relation between the duty to protect children and the right to decide upon immigration policies by looking at the case of Germany, which has a great number third-country nationals below the age of 18 living in its territory and which has also committed to the main international and regional agreements that address directly, or indirectly, the case of migrant children. Based on the German case, my main argument is that the paradox posed by the relation between the duty to protect children and the right to decide upon immigration policies requires that international legal provisions that address the rights of migrant children be transposed to the national legal apparatus in order to facilitate its implementation and to increase the legal force of these provisions.

The UNCRC and the Protection of Migrant Children

The United Nations Convention on the Rights of the Child (UNCRC) is considered the most comprehensive document related to protection of children's rights. It is also considered one of the most successful international agreements, being the international treaty relating human rights signed by the greatest number of parties. There are also three optional protocols to the UNCRC with two of them having great

acceptance by member states. Although there is a number of international treaties that oblige states to provide protection to children in migration context, the UNCRC is the most comprehensive and broader in scope. For this reason, the focus on the analysis will be based on this particular treaty. The Convention also upholds that states are obliged to take domestic implementation measures and these are to be reported and monitored by a Committee.

The UNCRC is not a self-executive treaty and the fulfillment of its provision require further legislative implementation into national law. A second issue is that the treaty is also opened to reservations. This can be a problem because in between the processes that entail domestic implementation and the application of some reservations, the protection of the right of the child can be restricted.

The provisions of the Convention apply to children in general, but some provisions more directly address issues faced by migrant children. Among them is the article 2 which deals with the principle of non-discrimination and can be addressed to migrant children based on the principle of non-discrimination on grounds of nationality or ethnic origin. What is a subject of discussion relating the article 2 is that in the UNCRC there is no clear definition of discrimination "nor there is a dedicated General Comment [from the CRC] on the non-discrimination principle" (Buck, 2014, 131). Yet, one can find in the Committee on the Rights of the Child General Comment No. 14 (CRC/C/GC/14) the claim that to ensure the principle of non-discrimination, it requires an active role coming from member states, and that ensuring is much broader than respecting, therefore requiring specific actions to tackle discriminatory practices relating children and migrant children in this context.

The article 3 (UNCRC) is considered to be the most important provision of the Convention and it creates the principles of the best interest of the child which states that

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

In order to clarify this provision after it was criticized for its vagueness, the Committee issued the General Comment No. 14 on the rights of the child to have his or her best interest taken as a primary consideration. In this General Comment the CRC stresses the best interest of the child is a "threefold concept" (CRC/C/GC/14, 2) which involves a substantive right of every child that should be taken as the primary and main consideration in every decision taken; a fundamental, interpretative legal principle which must be interpreted in the most effective manner in a way that puts the best interest of the child first; and a rule of procedure, meaning the best interest of the child must involve procedural guarantees. Seeing from a holistic perspective, the best interest of the child should be taken into consideration by public institutions, by all judicial and administrative decisions, and also by private sectors (Buck, 2014).

The article 6 is also relevant and it deals with the right to life, survival, and development. The particularity of the right to life in the UNCRC is that it is to be understood in a broader manner as states are obliged to grant "to the maximum extent possible the survival and development of the child" (UNCRC, article 6). In this context, it means that the right to life does not equal only to surviving, but to actually enjoying a life in which rights are granted and children are able to achieve their full potential. Moreover, the article 12 entails the right to participate and to be heard. The UNCRC was innovative in the sense that it brought children to the core of the discussion by stressing children's autonomy and by pointing them as right-holders on their own, regardless of their parents. The article 12 reiterates that by giving children the chance to participate in decisions which affect their lives and give them the right to be heard by relevant authorities.

Finally, the article 22 directly address protection of asylum-seeking and refugee children by stating

> States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties. (UNCRC/article 22/ paragraph 1)

Although this article is not understood as a general principle, in article 22 we can find the most direct provision relating migrating children within the scope of the Convention.

Under the clusters of special protection measures (articles 22, 30, 32 – 36, 37 paragraphs b and d, and 38 – 40) member states are required to report to the CRC on specific matters - in which among them one can find asylum-seeking and refugee children. It is also important to stress that although referred as a provision relating asylum-seeking and refugee children, the scope of the article is broader and should not be interpreted in a narrow sense. As sustained by Buck, this article deals with children located outside their country of origin in general, which includes asylum-seeking and refugees but also "internally displaced children, migrant children and children affected by migration" (2014, p. 205) in general. Another relevant document issued by the Committee more specifically related to UAMs and separated children is the General Comment No 6 (CRC/C/GC/6) which sets a clear map of states' obligations related to this group of children under the UNCRC.

The UNCRC is a success in terms of ratification. Nevertheless, despite its success and the significant impact of the UNCRC "the treaty has not yet been sufficiently applied or promoted amongst policy-makers with

regards to protecting the rights of children in the context of migration" (CRC 2012a., 11). In regard to migrant children, other issues can be observed. Firstly, in order to genuinely act in accordance to the main recommendations and guidelines relating protection of migrant children, states need to place the right of the child above, or at least in line with national migration laws.

Hence, it can be noted that the main problem is not the lack of international efforts or the unwillingness of member states to, in theory, commit to international agreements related to the protection of the child. The problem may rather be how this is transferred to the national legal framework and its actual implementation.

UNCRC and its Application in Germany

When we move to the question how are migrant children being considered in the application of the UNCRC by the national authorities in Germany we can see an incompatibility between the prompt commitment of the country to ratify the Convention and all its protocols, while at the same time imposing key reservations, some of which directly affected migrant children. As we will see, even in 2010 when the country withdrew from the reservations, there was no initiative to take further legal actions to ensure a better implementation of the Convention.

Lundy et al. highlight some key issues which can impact negatively in the implementation of international human rights treaties in the national level such as "the extent to which there is a pre-existing human rights culture; levels of awareness and training; political will and context; perceived relevance of human rights; level of coordination within governments and between non-governmental organizations and governments; the political makeup of States" (2012, 19) as well as the lack of coordination among different units within federal states. In Germany as consequence of the atrocities committed during the Second World War, human rights provisions appear, according to Wolfrum et al. (2015), in evidence in the Basic Law. There is indeed pre-existing

human rights' culture and the relevance of human rights is perceived among its citizens. The political set up of the country, the level of awareness and training, the level of coordination among federal, Länder, and local powers, the political will and context in dealing with migrant children's rights will be analyzed throughout this section.

Among the reasons behind children immigrating to Germany on their own are that "they flee from acts of war, breaches of human rights or economic need and are looking for protection or a better life" (CRC/C/DEU/3-4 2014, 74). It was also identified that a great part of UAMs who applied for asylum in the country migrated because their parents too migrated and at some stage during the journey to Europe got separated from the parents or family members. Those who arrive in Germany accompanied are usually fleeing because of the economic situation of the parents. The most common destinations for UAMs arriving in Germany are Hamburg, Berlin, Frankfurt am Main and Munich; these are major cities, with the major airports (Parusel 2009).

In Germany at the level of the Federal Government, the main responsibility for the fulfillment of children's rights is under the Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth. This ministry is also responsible for putting forward and representing children's interests. In the Parliament, there is a Children's Commission responsible for safeguarding children's interests in the Bundestag. This commission acts within the Bundestag as a lobby for children's interests. It "has been in existence since 1988, is a subcommittee of the Bundestag Committee for Family Affairs, Senior Citizens, Women, and Youth." (CRC/C/83/Add.7 2003, 8). Because protecting children's rights is said to be more effective in the lowest level, the Länder and the municipalities in Germany play an important role in ensuring children's protection. There is, therefore, a multilevel scheme on the protection of children's rights.

The Committee on the Rights of the Child, as well as local NGOs, advocate for the incorporation on the UNCRC into national laws as a tool for effective enforcement of the Convention, and therefore better

protection of the child. However, the country held a different position. In the Initial Report submitted to the Committee on the Rights of the Child Germany strongly highlighted its position in relation to incorporation of the UNCRC to the Basic Law as follows:

> Prior to the introduction of the draft of a law to ratify the Convention in the German Bundestag, the Federal Government had, in keeping with its standard practice and as required in order to avert potential breaches of obligations under international law mandated by an international treaty, examined whether it was necessary to amend national law prior to ratification of the Convention. The Federal Government came to the conclusion that amendment of national legal provisions was not required solely on the basis of the intended ratification of the Convention." (Initial State Party Report: Germany CRC/C/11/Add.5, 1994, 4)

After the initial report submitted by the country, the CRC in its concluding observations encouraged the country to give the UNCRC constitutional status (Concluding Observations: Germany, CRC/C/15/Add.43, 1995). In its second report the country stressed this was not attained and held the position that such measure does not need to be taken based on the argument children's rights are already indirectly enshrined in the German Basic Law (Second Periodic Reports of States Parties: Germany, CRC/C/83/Add.7 2003), this argument is held even nowadays as the country states the following on its last report to the CRC:

> The Federal Government intends to create child-friendly circumstances in all fields, in particular when it comes to protection, promotion and participation rights. It is however not necessary to amend the Constitution in order to do so." (Third and fourth periodic reports of States parties: Germany, CRC/C/DEU/3-4 2014, 7 – 8).

There is, however, no indication that a step towards incorporation of the UNCRC into the Basic Law will be taken any time soon in Germany, and its enforcement is rather a matter of political implementation. It is relevant to stress, however, that in the Länder level children's right have been introduced to the units' constitutions in almost all Länder, with the exception of Hamburg and Hesse (Ibid).

Therefore, in relation to the implementation, the country has highlighted since its second report the following:

> (…) implementation of the Convention is "not primarily a matter of legal enforcement, but first and foremost a task of political implementation, along with the administrative and judicial aspects." (Second Periodic Reports of States Parties: Germany, CRC/C/83/Add.7 2003, p. 14).

The country posed reservations to articles 9, 10, 18, 22, and 38 paragraph 2. Those dealt with separation of the parents; family reunification; parental responsibility and state assistance; refugee children; and war and armed conflict, respectively. Among the reservations made by Germany, it is important for the purpose of this work to mention the reservation relating to immigration laws. Germany placed migration law hierarchically above the protection of migrant children's rights (that should have an effect even if the child is in an irregular situation) by making a reservation stating:

> Nothing in the Convention on the Rights of the Child may be interpreted as implying that unlawful entry by an alien into the territory of the Federal Republic of Germany or his unlawful stay there is permitted; nor may any provision be interpreted to mean that it restricts the right of the Federal Republic of Germany to pass laws and regulations concerning the entry of aliens and the conditions of their stay or to make a

> distinction between nationals and aliens." (Initial State Party Report: Germany, CRC/C/11/Add.5 1994, p. 22)

The fact that Germany made such reservations was noted with concern by the Committee of the Rights of the Child in the initial report of Germany, from 1995. The Committee noted that "articles 2 and 3 [of the UNCRC] appear to be neglected" (CRC/C/15/ Add 43 1995, p. 3).

In 2010, after pressure by the Committee in consecutive reports, Germany withdrew from all reservations in which the rights contained in the UNCRC had no applicability in the German national legal order. This decision was followed by the country's continuous efforts to reduce its reservations to treaties concerning human rights (Wenzel, 2015). However, the 2014 country report to the CRC showed that there are still a series of problems faced by children of migrant origin in the country and withdrawal from the reservations does not ensure its actual application. The country has not incorporated the UNCRC into Basic Law, and this is seen as many as a fact that hampers higher levels of protection of children's rights in the country.

Furthermore, a closer analysis of different NGOs reports shows that the lack of appropriate protection for migrant children is also due to wrongful implementation by different authorities; due to wrong implementation practices. Problems related to access or discrimination in education institutions, lack of access to health facilities, inapplicability of the best interest of the child, lack of information by main institutions dealing with foreign minors, were key problems raised by independent organizations (Federal Association for Unaccompanied Refugee Minors 2013; CRC/C/DEU/CO/3-4 2014; The Federal Association for Unaccompanied Minors 2013; Lundy et al. 2012).

Some scholars, such as Jane Williams (2007), are in line with the argument that the implementation of the UNCRC can be better attained by moving the focus from the judicial area to the political one, as argued by the country in the Second Periodic Report. She argues that "the scope for further judicial development is limited in the absence of

substantial changes in the legislative framework" (2007, 261), and therefore it is essential to focus on extra-judicial mechanisms in order to promote “rights-based decision-making” (Ibid). Campbell argues it is “preferable to adopt a model based on a democratic bill of rights” (IN Williams 2011, 243), focusing on the political aspect and on the involvement of different levels of government. Williams also claims it is easier for different actors who can play a role in influencing decision-making process to influence it in the lower levels. She claims “it is easier for the non-governmental actors to engage with government at the regional level, NGOs efforts to procure the changes necessary for effective UNCRC implementation might be more likely to succeed at the regional level” (2011, p. 248).

Germany has been, indeed, taking the implementation of the Convention as a matter of political implementation. In its last report, a series of measures taken in order to enforce children’s rights were pointed out – some of which relate to children of migrant origin as well. Among the main measures one can find the Nationaler Aktionsplan für ein kindergerechtes Deutschland 2005–2010 (National Action Plan for a Child-Friendly Germany 2005–2010), of 16 February 2005. This plan was developed following the UN General Assembly session “entitled A World Fit for Children, which recommends, amongst other things, to put in place national action plans to implement its goals at national level” (Third and fourth periodic reports of States parties: Germany, CRC/C/DEU/3-4 2014, 6). Nevertheless, in the report, no direct reference is made on how the National Action Plan related to children with a migration background.

The fact that the country is a federation is used as an argument to justify the lack of compliance with some of the provision of the UNCRC. It is argued that it is difficult to apply the same standards among different Länder with concrete powers in key areas. However, as it was already pointed out, the decentralization of government power does not in any way reduce states parties’ direct responsibility to fulfill their responsibilities” (Buck, 2014, 121); this was also stressed by the CRC.

Moreover, because of the difficult situation in which many migrant children may be found in, they are highly dependent on protection through rights of second-generation – social and economic. In many cases, those are of competence of the Länder, or of the municipalities.

On one hand, as pointed out throughout this section, some, including the Committee, claims that the protection of children is compromised by the absence of the incorporation of the UNCRC into national constitutions. This, therefore, can be highlighted as a problem in Germany. On the other hand, jurists and scholars alike have stressed how the legal incorporation is not necessarily a requirement in international law due to the development of customary law. Hence, determining whether the lack of appropriate protection is a consequence of the lack of legislative change depends on the weight one puts upon the force of custom in international law, and the effectiveness of out-court mechanisms. We have, then, two lines of argument.

If we look closer to the German case we can conclude that codified immigration rules have much stronger forces than provisions on rights of the child that are not codified and lack defined implementation mechanisms. We face a situation where you have strongly binding provisions (immigration laws) versus diffused provisions with weak implementation force (international human rights treaties). The Committee on the Rights of the Child, NGOs, and advocates of children's rights at the federal level in Germany tend to favor legal incorporation of the UNCRC in the national legal apparatus. Brigitte Zypries (2008), Federal Minister of Justice of Germany (2002 – 2009) and State Secretary at the Federal Ministry of the Interior (1998 – 2002), strongly advocates for the incorporation of the UNCRC as a matter of making enforcement of the UNCRC more effective and ensuring higher levels of protection to children, include migrant children, in Germany. The incorporation of the UNCRC into Basic Law would require a two-thirds majority in the Bundestag; however, Zypries recognizes “it is politically difficult to find such majority” (2008, p. 4). The Children’s Committee in the Bundestag also strongly advocated for

incorporation of the Convention into Basic Law as the means of effectively protecting the children (Gruß, 2008). Nevertheless, this debate upon the necessity to incorporate the UNCRC into the Basic Law is still ongoing (Lundy et al., 2012).

Conclusion

Ideally, the UNCRC should serve as a transformative tool to foster the development of domestic-level laws and policies towards children, including migrant children. It was observed that on one side there is a prompt initiative of states to commit to protecting children's rights, but on the other side, this consensus about rights and protection is non-existent when the children in discussion have a migration background. This may be due to the fact that the national migration laws are still put above the responsibility and the commitment of states in order to protect children regardless of their citizenship and their migration status. Migrant children are, therefore, treated first and foremost as migrant and only then are treated as children.

On the one hand, it is argued that the protection of children is compromised by the absence of incorporation of the UNCRC into national law. On the other hand, other jurists and scholars alike have stressed how the legal incorporation is not necessarily a requirement in international law also due to the development of customary law. Hence, determining if the lack of appropriate protection is due to the legal application of the UNCRC depends upon the weight put on the force of custom in international law, and non-legislative mechanisms of enforcement. Throughout this paper I argued that the paradox posed by the relation between the duty to protect children and the right to decide upon immigration policies requires that international legal provisions that address the rights of migrant children be transposed to the national legal apparatus in order to facilitate its implementation and to increase the legal force of these provisions. This is due to the fact that immigration authorities have clearly codified laws and rules in relation to the entrance, stay, and deportation of foreign nationals, all of which have strong binding force while international human rights treaties very

often have weak implementation mechanisms. It becomes, then, understandable why immigration laws are put in first place and why foreign minors are treated first and foremost as migrants and only then as children.

Therefore, the paradox posed by the relation between the duty to protect children and the right to decide upon immigration policies requires that international legal provisions that address the rights of migrant children be transposed to the national legal apparatus in order to facilitate its implementation and to increase the legal force of these provisions. Only in this way we can move a step further in ensuring that the most important provision of the UNCRC be respected – that the best interest of the child be put in first place and that migrant child will be treated first as children and only then as migrants.

Furthermore, in the EU context, this paradox between keeping up with human rights' international commitments and implementing national agenda on immigration leads to a much more complex issue: externalization of immigration policies. The EU member states actions to deal with asylum and immigration policies are based on a strong emphasis on extraterritorial control, which inevitably creates a link between security and migration (Lavenex, 2007). Furthermore, political conflict, natural disasters, and climate change are among some of the factors that have led to an increase in the number of people voluntarily or forcibly moving. Political instability and mass people displacement make it difficult for the achievement of the Sustainable Development Goals (SDGs) in the EU and abroad. As in a cyclical process, fulfilling the goals will decrease the necessity of people to move away from their home countries. For EU member states, keeping up with its international commitments, including towards migrant children, and assisting other states to fulfill the SGDs becomes a win-win game and a first step to deal with mass displacement of people in a responsible manner, respecting the principles on which the Union is built upon.

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PROMOTION OF HUMAN RIGHTS IN THE COMMON COMMERCIAL POLICY OF THE EUROPEAN UNION

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Abstract

The scientific article focuses on the analysis and assessment of the human rights policies of the European Union in its external relations. Under external relations, in the context of the present article, we understand mutual economic relations between the EU and the third countries, amended by international agreements. The priority interest of the report is given on the relationship between two key priorities of the EU: one the one hand, it is dissemination and respect of the human rights in the third countries; and the priorities of the trade as an instrument of hard economic power of the Union, on the other. The aim of the article is the analysis of the relationship between the human rights and the international trade in the Union's foreign policy, as well as, the assessment of the instruments application of dealing with the human rights conditionality towards the third countries. In the analysis of the subject part, we will look at the human rights instruments conditionality in the international agreements, as well as, the reflexion of the current literature in this area of scientific research.

Key words: common commercial policy of the EU, EU trade agreements with the third countries, human rights, the human rights clause, the European Union.

Introduction

The European Union is often labelled as an economic superpower capable of enforcing its economic influence on the international scene, and at the same time as a political dwarf unable to duplicate the same

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results that would correspond to its economic power. The Union is the largest trading powerhouse in the world with more than 20% share on the world's gross domestic product (Tenuta and Bierbrauer, 2016). Trade also represents the policy area in which the Member States have transferred their competences to the European Union, to the European Commission respectively, and we are speaking about the sphere of the so-called exclusive competence of the Union (Treaty on European Union, 2010, Article 207). The Union's trade cooperation does not only take place in the field of relations with third countries but its activity is also marked by the considerable coordination of its activities with the activities of other international organisations such as the World Trade Organization (WTO), the Organization for Security and Cooperation in Europe (OSCE) or the International Monetary Fund (IMF) and others.

In addition to the aforementioned issue of international trade, the Union is also actively involved in the area of protection and dissemination of human rights in the world. It does so through the European Union's Common Commercial Policy (CCP) and international trade agreements concluded with third countries. The Union's obligation to link trade and human rights stems directly from primary law and, as Leino (2005, 331) states, these principles are based on the founding treaties that established the values on which the EU's action is based. With regard to the focus of the article, it is also appropriate to recall the provision introduced by the Treaty of Lisbon, which explicitly states that the EU action on the international scene is governed by similar principles, emphasising democracy, rule of law and human rights (Treaty on European Union 2010, article 21). In other words, this also means that the European Union is obliged to take into account human rights aspect in the negotiations and subsequent conclusion of international agreements with third countries.

Of particular relevance in this context is a human rights clause, which forms an obligatory part of international agreements with third countries. These are agreements with a wide range of objectives. In the presented paper, we will focus primarily on the content and scope of

human rights protection in the above-mentioned clauses as well as on the process of their preparation and subsequent implementation in practice. The paper also aims to summarise previous research in the field of CPP.

The EU Common Commercial Policy and its Promotion of Human Rights

The population of more than 500 million and the largest share on the world trade make the Union a cluster of up to a quarter of the world's wealth (European Commission 2014, 3). In addition, the Union is the world's leading exporter of goods and services and it is also the world's largest source of foreign direct investments (FDI). These facts make the Union a very open market with a high level of integration into the world economy, and a partner of global importance with significant commercial, economic, financial and political impact (Tenuta and Bierbrauer 2016). In the introduction, it should also be emphasised that the international trade has become one of the main pillars of the long-term Europe 2020 Strategy (European Union 2011). On the basis of the aforementioned strategy, the European Union initiated negotiations with the countries with the largest share of foreign trade due to the continued maintenance of tariff and non-tariff barriers. For these reasons, negotiations with South Korea, India or ASEAN (2007) were initiated, followed by negotiations with Canada (2009) and other countries. By concluding trade agreements, the Union also responds to the overall development of the world trade. According to up-to-date data and calculations, over 90% of the world-wide demand will be generated outside Europe in the next 15 years, and that is the reason why the Union is so extraordinarily active in the field of trade. It aims to capture the trade potential of third countries and thus to open up opportunities for its national states to expand to foreign markets, which would be the engine of their further economic development (European Commission 2014, 5). The very same agreements form preferential trade agreements aiming at the elimination of tariffs and the opening of markets.

The priority part and the focus of the article is on the CCP and the aforementioned international agreements of the EU that result directly from it. Thus, we will define the CCP according to the EU law: *"the EU's common commercial policy includes uniform principles, in particular in relation to tariff adjustments, the conclusion of customs and trade agreements on trade in goods and services, the commercial aspects of intellectual property, foreign direct investment, the unification of liberalisation measures, export policy and trade defence measures, for example in the case of dumping and subsidies"* (Treaty on the Functioning of the European Union 2010, Article 207). At the same time, the CCP can be included in the framework of the Union's external action. Under the external action of the EU, the Union's activities in the field of CCP, cooperation with third countries and humanitarian aid, the conclusion of international agreements, including the Union's relations with international organisations and third countries are understood (Treaty on the Functioning of the European Union 2010, fifth part).

If we focus on the area of CCP, which also includes international trade, EU trade agreements with third countries respectively, it should be highlighted that it belongs, according to the Article 207 of the Treaty on European Union, to the so-called exclusive competences where the European Commission holds the dominant position. However, this does not mean that the Member States of the Union do not interfere with the CCP in any way. The Member States have a strong representation in the Council of the EU‘s Trade Policy Committee (TPC), through which they express their views on the multilateral issues under discussion where they can promote and defend their national positions and thus influence the direction of the CPP. With regard to the area of bilateral trade agreements, unconditional notification to the Committee is obligatory in order to allow the Committee to express its views and verify compliance with the WTO rules as well. At the same time, it is necessary to note that prior to the Committee's deliberations the materials presented by the Commission are discussed at the levels of COREPER II, Deputies, and Full Members (Ministry of Economy of the Slovak Republic 2014). Very often in the practical functioning of

the CCP, are the national interests different from those of the Commission (represented by DG TRADE), and as El-Agraa (2001, 473) points out, the actions when the Member States do not comply can be also taken in this area. As Slašťan and Siman (2012) add, the transfer of competences to the Union in the defined areas weakens the international legal personality of the Member States. We recall here that all the Union actions are governed by the Article 21 of the Treaty on European Union - in other words, the Union has also committed itself to the dissemination and promotion of the principles of democracy, the rule of law and respect, indivisibility and universality of human rights and fundamental freedoms. As we have already outlined, the EU's relations with international organisations also fall within the area of CCP.

The EU action on the international scene is guided by principles that have been of decisive importance since its founding, and its importance has been strengthening, until now. These are the principles enshrined in the Charter of the United Nations as well as in international law. At this point we are coming back to the questions of this article's interest such as the protection, promotion and respect for human rights and democracy. The Union, in its external relations, also taking into account the area of the CCP, aims to strengthen and expand its international relations with other countries and regions of the world while respecting those principles. One of the documents demonstrating such action by the Union is the Strategic Framework for Human Rights and Democracy, adopted by the Council of the European Union (2012) on 25 June 2012, together with an action plan for its implementation. This framework defines the principles, objectives and priorities of the Union in order to improve the efficiency and consistency of common EU policies (including CCP) over the next decade. As stated in the Union's official information sheets, *"these principles include the incorporation of human rights into all EU policies (such as the silver thread)"* (Bandone 2016, 1-2). Of course, the list of the Union's activities to promote and strengthen human rights is much broader - for illustration purposes, we mention the Union's participation in multilateral fora such

as the Third Committee of the UN General Assembly, the UN Human Rights Council, the OSCE or the Council of Europe. Recent human rights enforcement activities also include the EU Action Plan on Human Rights and Democracy adopted for the period 2015-2019, which includes, amongst other commitments, the human rights issue and trade agreements where this commitment is renewed in a proactive way (European Union External Action 2015). In conclusion, we just say that the Union strengthens human rights through trade in an indirect way, reflecting the fact that trade as such contributes to the general growth and development of a country.

Human rights conditionality in the EU's common trade policy

As Veltuti (2015, 1) states, since the mid-1990s, the EU has developed a smart set of instruments to promote human rights in its external trade policy. As an example, human rights clauses that have become the so-called essential element of trade agreements (negative conditionality) or a set of human rights criteria in the EU's Generalised System of Preferences (GSP). For example, the condition of GSP+ system application, which provided zero tariffs to 66% of all tariff items, became the ratification and implementation of 27 key international conventions, including the human rights and labor rights, sustainable development and good governance conventions (positive conditionality) (European Commission 2016, Abrisketa et al., 2015, 62). Similarly, Paasch (2011, 3) identifies the dissemination and promotion of human rights in the CCP by the EU via human rights clauses and the Generalised System of Preferences as key elements. The relationship between human rights and trade was also highlighted in the Report from 2010 as well as in the Strategic Framework from 2012 and the follow-up Action Plan on Democracy and Human Rights, which sets out several Union trade activities to promote and disseminate human rights (Bierbrauer 2016). Gáspár-Szilágyi (2016, 2) reminds, EU human rights provisions are more than is required by the GATT or the WTO and, as Horn and Sapir (2009, 42) state, these provisions of the EU are known as the so-called WTO-extra provisions,

which in addition to human rights, can also include requirements in the fields of environmental protection, consumer protection, working conditions etc. As Hachez (2015, 7) states, it represents the application of the concept of Europe as a normative power. The CCP is similarly understood by Horn and Sapir (2009, 7) who describe it as an instrument of EU declaratory diplomacy. These Union activities are the result of the aforementioned commitment of the European Commission to protect human rights worldwide.

Turning back to an important element of trade agreements with third countries, to the human right clause, it should be remembered that it has not always been a firm part of them. However, in the 1970s, the Union found itself in a situation where it had legally binding agreements of a commercial nature and at the same time it had close relations with countries that systematically violated human rights. According to Hachez (2015, 7), the solution was to abandon the politically neutral stance and to integrate the human right clause into the instruments of the CCP, in particular in response to the Ugandan massacre in 1977. Dolle points out (2015, 216) that it was not an initiative of the Union itself but a defensive response to the situation where the Union did not want to remain in a situation, in which it would indirectly support the violation of human rights in a third country.

The first direct reference to human rights in EU trade agreements is linked to Article 5 of the Fourth Lomé Convention with the ACP countries. However, its systematic incorporation into international agreements can be observed from 1995, approximately in the last 20 years (Bartels 2014, 6). This is reaffirmed by Aaronson and Zimmerman (2008), who also claim that the origins of human rights integration in preferential agreements and free trade agreements have been observed since the 1990s. According to the European Union (2015), all current trade or cooperation agreements with third countries, which currently amount to more than 120, contain a human rights clause. Current developments, however, show that the Union is gradually withdrawing from its original strict attitude based on the

systematic incorporation of human rights clauses into all international agreements.

With regard to gradual developments in this area, the standard agreements included two types of non-compliance clauses; the Baltic Clause and a non-execution clause, also known as the Bulgarian clause. Paasch (2011, 13) claims that the first one directly entitles party to suspend the trade agreement in case of serious human rights violations. By contrast, the Bulgarian clause does not allow automatic suspension of mutual cooperation by default but it creates a consultation mechanism that can prevent a suspension of the agreement. In this sense, it is more flexible. The European Commission has just on the basis of the Bulgarian clause standardised human rights clauses, which as it has already been mentioned, have become part of the trade agreements since 1995 (Paasch 2011, 13).

In order to introduce the human rights clause and its formulation in a more detailed way, the international agreements include most often the following, respectively a very closely related provision: *"respect for the democratic principles and fundamental human rights enshrined in the Universal Declaration of Human Rights affect the domestic and international policies of the Contracting Parties and constitutes an essential element of this Agreement"* (European Union External Action 2014). However, its content and form has been gradually changing with regard to the aforementioned long period of its incorporation into international agreements, and, as Hachez (2015, 9) points out, this is due to two major factors. First of all, it is about its gradual development over time and its attempt to reflect the difficulties of its application in practice into its more appropriate formulation, content respectively. The other key reason is the third country's membership of a particular geographic or regional grouping, which confirms the formation of the Union's regional policies according to blocks of countries (Hachez 2015, 9). However, as it can be understood from the above mentioned, the clause does not contain specific human rights, which may, on the one hand, imply a forward-looking approach of the EU based on the

expectation that the treaty may remain in force for a longer period and therefore, it would not reflect the development of human rights policies over time in case of its specific human rights content. On the other hand, a remarkable exception, as Abrisketa et al. (2015, 65) reminds, is the Cotonou Agreement with the ACP countries, which contains direct references to human dignity and groups of civil, political, economic, social and cultural rights. As it has already been pointed out, human conditionality in the EU international agreements does not only exist in the form of the human right clause itself but it can also be included in the preamble of these agreements (Gáspár-Szilágyi 2016, 2).

The European Union aims to interconnect trade and human rights in a way that brings third countries to the following conclusion; if we strengthen human rights, it will have a positive impact on the attraction of long-term investments, stimulation of trade, and achieving a sustainable development (Bandone 2016, 3). Hafner-Burton (2012) considers the interconnection of human rights and trade as a good idea. The commercial agreements' implementation is linked directly to respect for human rights, which according to Hafner-Burton's conclusions, represents the ideal instrument to push third countries to respect the human rights. The opposite, however, is the United Nations human rights conventions. The increasing number of conventions adopted by any country does not guarantee anything at all. As Hafner-Burton (2005, 623-24) further notes, the fundamental idea of combining economic benefits stemming from international agreements with the commitment of the parties to respect the human rights is the fact that countries that have become signatories of human rights conventions and do not contain any form of coercion, sanctions respectively, are generally less successful in achieving their goals than those, which directly include some form of coercion or sanctions. Furthermore, conclusions of Hafner-Burton's (2005, 623-24) empirical studies clearly confirmed that repressive regimes that have concluded at least one international agreement containing human rights, violate human rights in a lower extent than the ones that are not party to any such agreement at all. It is clear from this that the Union can also act in its

foreign economic relations, especially in the implementation of its CCP as an entity with significant influence that can bring about a change in the field of human rights, and thus spread its values through its extensive trade relations and economic impact (Hachez 2015).

According to Dolle (2015, 224), human rights clauses have two basic tasks; ensure that EU policies are fully consistent with their fundamental principles as well as with the international law. A moral argument for the inclusion of human rights clauses in international agreements is, according to Mansoor (2005, 139), the fact that low wages and low standards of work are the cause of human rights violations in developing countries, and the interconnection of trade and human rights is needed to avert this situation. The nature of human rights clauses is based on a system that motivates third countries in two basic ways to respect them. These incentives are based either on a positive incentive depending on third country's trade benefits or on non-cooperation where a penalty is based on several forms of sanctions. The threat of weakening or full suspension of trade is a powerful tool for coercion, used by the Union against third-country governments (Aaronson 2012). As Schimmelfenning and Knobel (2003, 498) remind, this is a common Union strategy how to coerce a third party to comply with international agreements. To the standard coercive instuments of the Union, to this area belong the withdrawal of privileged status, support or assistance to a respective third country.

Horng (2003, 680) notes that the human rights clause is to be regarded as an essential element of the EU agreements, rather than as an individual clause of a subsidiary or complementary nature. The main goal of human rights clauses is to demonstrate the parties' joint commitment to respect human rights, which also provides the legal basis for appropriate measures, including the abovementioned suspension of the application of such agreements. As stated by Gropas (1999, 12), it is the application of the concept of political conditionality. In other words, it means that human rights clauses strengthen and at the same time enable a stronger and more principal attitude to respect

human rights on the side of the Member States of the Union as well as in the countries with, which the Union has concluded preferential trade agreements.

In conclusion, we add that, according to Fierra (2003, 282), human rights clauses should be more than just procedural mechanisms that suspend the fulfillment of contractual relationships. In other words, human rights clauses can not be perceived only in such an isolated way. Fierro (2003, 42) even identifies a common point of convergence that is in line with the objectives of trade agreements and human rights clauses. Hafner-Burton (2010, 11) points out that the human rights dimension of preferential agreements is a great honor to the EU, without which human rights would unlikely become one of the main pillars of trade agreements, taking into account the nature of third countries' individual policies that are often with them in a direct antagonism or they stand towards human rights in a neutral way.

Conclusion

The article was intended to present human rights conditionality in the EU's CCP in a coherent form through the synthesis of existing research. At the same time, it was aimed to highlight a few of challenges that the CCP faces. In conclusion of the work, it is also necessary to state that the sanctions resulting from the activation of the clause are not always the happiest solution, as these sanctions can often end up with a failure that could weaken the credibility of the Union's human rights policy rather than lead to its further strengthening. After all, its activation can painfully affect ordinary people of the respective country rather than the government that is responsible for the sanction (Hachez 2015, 21-22). However, this should not lead to a policy that can be briefly described as "preaching water and drinking wine". In the context of this contribution, it would seem appropriate to replace water with human rights and imaginative wine with economic benefits.

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