

EUROPEAN LEGAL PRINCIPLES ON HUMAN RIGHTS AND DEMOCRACY - IMPORTANCE FOR THE WESTERN BALKANS

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In terra pacem omnes homines pariant.¹

Abstract

The transition to democracy and the existence of a modern state cannot be separated from the existence and progress in the field of human rights and democracy. Without clear legal guarantees for respecting basic human rights, such a move may again lead to the establishment of autocratic regimes. This postulate is main foundation of the paper and guideline to analyze the relevance of European legal principles on fundamental rights, contained in the Lisbon Treaty on the European Union (EU) and its Charter of Fundamental Rights. More precisely, in contemporary international law and relations, characterized by increasingly widespread integration processes, the transfer of cultural and moral patterns goes from developed countries to less developed and developing countries, through transposition of legal principles on human rights and democracy. By taking those valid legal principles, which are increasingly used by the legal transplants and through legal harmonization process, countries in transition and developing countries partially or completely adopt the cultural models and moral patterns of the most developed countries concerning the basic human rights, which are cornerstones of contemporary democratic states. This process enables more rapid legal advancement of national legal systems of countries in transition and their faster integration into international community. In this manner, the EU is normative power, besides its economic and political significance and it acts towards candidate countries of the Western Balkans, but also to other third countries, through its values enshrined in legal principles of the Lisbon Treaty and its Charter. Consequently, it can be concluded that European legal principles on human rights and democracy represent crucial legal and political guidelines in accession of candidate countries into the EU. Finally, the new EU Strategy for the Western Balkans of February 2018 confirms that the rule of law, fundamental rights and governance must be strengthened significantly in those countries.

Keywords: *European principles on human rights, EU Lisbon Treaty*

JEL Classification: [K38]

1. Introduction

The existence of a modern state cannot be separated from the existence and progress in the field of human rights and democracy. Without clear legal guarantees for respecting basic human rights, such a move may again lead to the establishment of autocratic regimes.

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¹Peace on Earth has to be achieved by all people.

In contemporary international law and relations, characterized by increasingly widespread integration processes, the transfer of cultural and moral patterns goes from developed countries to less developed and developing countries, through transposition of legal principles on human rights and democracy. In this context, European legal principles on fundamental rights, contained in the Lisbon Treaty on the European Union (EU) and its Charter of Fundamental Rights are especially relevant for countries in transition of the Western Balkans.

By taking those valid legal principles, which are increasingly used by the legal transplants and through legal harmonization process, countries in transition and developing countries partially or completely adopt the cultural models and moral patterns of the most developed countries concerning the basic human rights, which are cornerstones of contemporary democratic states. This process enables more rapid legal advancement of national legal systems of countries in transition and their faster integration into international community. In this manner, the European Union (EU) is one of the most powerful normative force, besides its economic and political significance and it acts towards candidate countries of the Western Balkans, but also to other third countries, through its values enshrined in legal principles of the Lisbon Treaty and its Charter. EU strives to create more faire and better world for all people – not only for the EU citizens, but for all those outside its borders too.

2. European legal principles on human rights and democracy

The EU's external action in human rights and democracy matters has its legal basis in the EU Lisbon Treaty and particularly in the EU Charter of Fundamental Rights. After the entry into force of the Lisbon Treaty on EU (December 2009), the EU Charter of Fundamental Rights became not only political document (since 2000), but also legally binding act (Gasmi, 2016: 68 – 74).

The original Rome EC Treaty (1958) did not mention any reference to fundamental rights (Piris 2010: 146). Rome Treaty did refer to the principle of non-discrimination on the basis of nationality, but it lacked a bill of rights. In the Maastricht Treaty on the EU (1993) it was for the first time inserted the Art. 6(2) providing that „the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. And as they result from the constitutional traditions common to the Member States, as general principles of Community law“. Besides European supranational primary legislation (EU Treaties), European Court of Justice had stated (1969) that fundamental human rights are „enshrined in the general principles of Community law and protected by the Court“² (Piris, 147). European Court of Justice has regularly interpreted or

² Judgment of 12 November 1969, Case 29/69, ECR 425, para.7. Judgment of 17 December 1970, Case 11/70, ECR 1125, para. 4.

reviewed the validity of Community acts and measures in the light of human rights as protected in the EU legal order (Groussot & Pech 2010: 7). However, despite these legal developments, till 2000, the Union lacked its own codified declaration of fundamental rights. Therefore, the legal validity of the EU Charter of Fundamental Rights is a positive turning point in the framework of the EU democratic legitimacy.

Entry into force of the Lisbon Treaty marked a step forward into more sustainable political and very sophisticated social model of the European Union. Beyond its borders, the Union promotes the respect for democracy, the rule of law and human rights and freedoms through putting those principles as fundamental integral parts of its bilateral agreements with third countries, non-members and candidate countries, as well as in multilateral external relations. EU foreign policy instruments (agreements, dialogues, etc.) and financial assistance programs directly promote strengthening human rights and democracy in third countries, non – members. Respect for human rights, stable democratic institutions and the rule of law is one of key preconditions for all candidate countries' accession to the Union according to Copenhagen enlargement criteria of 1993 (Gasmi, 124).

The issue of human rights protection at the EU level was raised in the context of the Union desirable accession to the European Convention of Human Rights and Fundamental Freedoms (ECHR) of the Council of Europe, which was announced by the European Commission in the Memorandum of 1979. However, the EU's accession to the European Convention was considered to be a fundamental constitutional change, which could not be implemented without a prior revision of the founding Treaties according to the Opinion 2/94 of the European Court of Justice. This fact was incentive for the EU leaders to make decision on consolidating fundamental rights in the EU single document: the EU Charter of Fundamental Rights, which was proclaimed on 7th December 2000.

The Charter obtained real legal power by virtue of the Art 6 (1) of the Lisbon Treaty. This means that the Charter became legally binding upon the EU institutions and upon the Member States when they implement Union law. Thus the Charter gained the same legal value as the Lisbon Treaty (Piris, 159, Gasmi, 68-74). However, many authors warn that the Charter is not obligatory for national authorities of Member States (Piris, 160) in their daily policy and law making at national level, except when national public authorities implement the Union law. This is very important limitation of legal effects of the Charter seen from the point of view of ordinary citizens and their protection in all situations. Furthermore, the Charter does not apply to the United Kingdom and Poland by virtue of the Protocol no. 30 that was annexed to the Lisbon Treaty, thus representing possible „opt-out” clause for the Charter in case of those Member States. Despite those facts, at the EU level the protection of human rights is ensured by the European Convention for the Protection of Human Rights and

Fundamental Freedoms - ECHR (Art. 6 /3/ of the Lisbon Treaty), because all Member States are signatories of the European Convention (ECHR).

It is foreseen that the Union will accede to the European Convention (Art. 6 /U2/). The Lisbon Treaty foresees that: “The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the decision concluding this agreement shall not come into force until it has been approved by the Member States in accordance with their respective constitutional requirements” (Art 218 /8/)³. The accession would complete the protection of fundamental rights of EU citizens and would strengthen fundamental values. It would also improve the effectiveness of EU law and enhance the consistency of fundamental rights protection in Europe. Again, on 18 December 2014, the Court of Justice of the EU gave a negative opinion on the compatibility of the draft agreement with the EU treaties. Under discussion is a new solution which makes it possible to fulfil the Lisbon Treaty obligation of accession and takes into account all aspects mentioned by the Court in its opinion of 2014.

Nevertheless, in the Art. 2 basic values of the EU are proclaimed: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

Furthermore, in the Art. 3 (5), it is regulated that: “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.”

Consequently, the EU is implementing those values and principles in its cooperation and bilateral agreements with third countries, non-members and especially with the candidate countries that are in the accession process. Candidate countries are not allowed to ask for any „opt-out“ clause (Gasmi, 128), but have to adopt and implement whole *Acquis communautaire*, i.e. the EU law, common foreign policy instruments and other EU policies' obligations. European legal principles on human rights and democracy are contained in the respect of human dignity, equality, freedom, rule of law, democracy and minorities' rights. Those principles are formally established for the first time at the EU level, through formulation of the Art. 2 of the Lisbon

³ THE LISBON TREATY, Readable Version, Bonde Jens-Peter (ed.), 2009, Foundation for EU Democracy, Denmark.

Treaty. Furthermore, those legal principles on human rights and democracy obtained the treatment of the values of the Union, which the EU is to promote (Art. 3 /1/). These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. Therefore, it is important for candidate countries to follow and implement European legal values and principles aimed at modernization of their societies and economies.

3. EU - normative power

„Justice and out of it derived fairness are an adequate example which shows how the naturally - legal values, which are originally idealistic, can be operationalized in the positive law, which is originally realistic.

It allows for one to conclude that the natural law, too, can be useful, at least in the part in which it flows into the positive law.

The natural law has not come into being out of leisure time either, but out of dire need to maintain the co-existence of individuals in a society and enable their betterment. “

(Mitrović Dragan 2017:152)

Legal power of the European Union was, from early beginning of European Communities and then Union, one of often present topics among authors discussing whether it is a specific type of international stakeholders, not only for its unique institutional nature, but also for its predisposition to follow different types of interests. This issue triggered great attention both of academics and practitioners even in the last couple of years, referring to discussions whether the EU is more civil than military power (Smith, 2005: 63-82, Whitman, 1998: 74). There is a question as well whether the Union follows supranational or ethic interests in its attempt to shape global order through normative changes and not by use of force (Manners & Whitman 2003: 380-404).

The EU is not conventional big power despite its economic global significance and therefore it gained the title as being “paper tiger” or “tiger without teeth”, accentuating the lack of adequate military force at supranational level (Gasmi & Zečević, 2016: 32). Some authors likewise defined the Union as economic giant and a military-political dwarf (Gasmi, 285). However, the EU possess normative power acting primarily through ideas and values (Manners, 2002: 235-258). Consequently, many authors stress their attention to European identity, values, legal principles and the EU foreign policy (Addler & Crawford, 2004: 34, Diez, 2005: 613-636, Lucarelli, 2006: 1-18, Ed. Sjurson, 2006: 23).

Theory of law recognizes the imperfect legal norms, such as international ones like conventions, since they are without classic sanctions imposed by the state. However, it is important to stress that those norms are of great legal importance, since they are based and contain universal legal values, such as justice, fairness, right to freedom of violence, right to dignity and other human

rights (Mitrović D, 2017: 137). Those international norms and legal standards as such, have emancipatory role for national norms and national legal systems of states signatories, but also for the whole international community.

International legal transplants are one of main sources of legal changes in national legal systems (Mitrović, 158), preferably in more advanced and prosperous manner to provide for optimal protection of human rights and the rule of law.

An effort to build the European Union represent global civilization effort, taking into account its sophisticated and well developed legal system based on values of protection of human rights, fundamental freedoms, human dignity, democracy and rule of law. Starting from the fact that even some new Member States still have title of so – called “new democracy systems”, European candidate countries have to perform their coordination of national constitutional principles and national legislation with European values and principles, exactly through legal transplants, but bearing in mind certain flexible approach accommodated to their internal specificity.

Among EU Member States, the coordination of their differences is never finished, especially taking into account their different cultural, legal and also economic patterns. However, as famous motto declares: *In varietate concordia!* (Harmony in diversity), the EU is based on respect for national differences and identities of its Member States (Art. 4 /2/, Lisbon Treaty).

Same postulate is applied in its enlargement process to candidate countries that are in the process of complying the Copenhagen criteria of stable democratic institutions, the rule of law and respect for human rights and freedoms, but at the same time preserving their national identity and culture. Harmonization of economic, cultural, legal and other differences of candidate countries in the accession to the EU through adoption and implementation of European legal values and principles of democracy is the only way to achieve optimal enlargement of the Union.

Furthermore, in the Art. 8 of the Lisbon Treaty it is foreseen that: “The Union shall develop a special relationship with neighboring countries, aiming to establish an area of prosperity and good neighborliness, founded on the values of the Union and characterized by close and peaceful relations based on cooperation. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly.”

Values of the Union are the foundation of close cooperation with neighboring countries, likewise with the candidate countries, i.e. *dignity, freedom, liberty, democracy, equality, rule of law, human rights and rights of minorities, as defined in the Art. 2 of the Lisbon Treaty*. Those values are legitimately defined because they originate from the will and needs of the EU Member States, the EU Institutions and EU citizens themselves.

4. Human rights and democracy as keystone in EU enlargement process

Fundamental rights and democracy within the EU, as defined in the Lisbon Treaty, have significance not only for citizens of the EU themselves, but also have impact on its external activities twofold. The first aspect of this impact is inclusion of human rights and democracy as general principle of the European Union, as indicated in the EU Charter itself, which became an integral part of the Lisbon Treaty, as well obligation of the EU to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The second aspect of this reflects in the scope within which provisions on human rights and democracy are promoted in all external activities, starting with trade, via humanitarian and other forms of the EU assistance to migration issues.

Seen from the global point, the EU is a kind of “exporter” of its own values and democratic standards and human rights principle. According to its global trade importance, the EU puts the requirement for respect and guarantees of human rights and democracy as being an essential element of bilateral agreements of the Union with candidate countries on accession to the EU.

The European Union is often considered to be an “exporter of democracy principles and stability” to third countries, non-members. This process can be interpreted in two-fold way: a negative one, when those efforts of the Union are perceived as a political pressure to certain candidate country or positive, when the Union is acting as a catalyst of democracy deepening process and human rights protection in concerned country.

Beyond its territory, the European Union promotes respect for democracy, the rule of law and human rights as a fundamental element of its bilateral and multilateral external relations. EU foreign policy instruments in its enlargement process (bilateral agreements, dialogues, etc.) and financial assistance programs help strengthening of democracy and human rights in candidate countries. The EU’s external action in democracy and human rights matters is legally based in the Lisbon Treaty and its EU Charter of Fundamental Rights. The Treaty of Lisbon sets out the obligation: to respect fundamental rights within the European Union and to advance and consolidate human rights in EU external action.

In its conclusions of 25th June 2001, the Council welcomed the Commission Communication of 8th May 2001 on the EU role in promoting human rights and democratization in third countries, which represents an invaluable contribution towards the coherence and consistency of the Union’s policy on human rights and democratization. In its conclusions the Council reaffirmed its commitment to the principles of integration of human rights and democracy into all EU actions, openness of its policies and identification of priority areas. As part of the process of implementing those Council conclusions, the Working Party on Human Rights (COHOM) undertook to

establish guidelines on human rights and democratization dialogues in consultation with the Working Party on Development Cooperation (CODEV) and the Committee on measures for the development and consolidation of democracy and the rule of law, and for the respect of human rights and fundamental freedoms. The European Union is engaged in human rights and democratization dialogues with a number of countries, but especially with the candidate countries. Those dialogues are themselves an instrument of the Union's external policy. They are among a range of measures that the EU may use to implement its policy on human rights and democratization. Those dialogues constitute an essential part of the EU overall strategy aimed at promoting sustainable development, peace and stability (as foreseen in the Lisbon Treaty, Art. 3).

Furthermore, at global level, interdependence between human rights protection and democracy on the one side and peace and stability on the other side, is emphasized by the World Summit declaration of 2005, which was adopted by the UN General Assembly.

The Council makes sure that fundamental rights are taken into account when developing EU legislation and action. It also works on the promotion of human rights in relations with non-EU countries and international institutions, as well as in the negotiation of international agreements. At the EU level, there are different types of dialogues, including dialogues at high political level of a rather general nature, based on regional or bilateral agreements or conventions or strategic partnerships dealing systematically with the issue of human rights and democratization.

These include in particular: 1. Cooperation with the candidate countries of the Western Balkans – Association and stabilization bilateral agreements; 2. The Cotonou Agreement with the ACP countries; 3. Relations between the EU and Latin America; 4. The Barcelona process (Mediterranean countries and the neighborhood policy (countries of the Caucasus in particular); 5. Relations with the Turkey (long time candidate country); 6. Relations with Russia and China.

The EU remains committed to implementing the entire human rights and democracy agenda as reflected in the 2012 Strategic Framework for Human Rights and Democracy, which continues to guide the Union's actions, and in the EU human rights guidelines, Council Conclusions and strategy papers. The EU will continue to promote and defend the universality and indivisibility of all human rights in partnership with countries from all regions, in close cooperation with international and regional organizations, and with civil society⁴. Within the framework of the Action plan on Human Rights and Democracy 2015 – 2019, the Council concluded that, in order to achieve a more effective EU human rights and democracy support policy, it is necessary

⁴ Council Conclusions on the Action Plan on Human Rights and Democracy 2015 – 2019, Brussels, 20 July 2015, 10897/15 .

to: “Develop, share and build upon the best practices identified for human rights dialogues, including follow-up processes (by 2017), b. Ensure that human rights and democracy considerations are factored in to the different sectorial dialogues with a partner country and as such form part of the overall bilateral strategy, (ongoing) c. Ensure internal-external coordination in the context of human rights dialogues, including the annual EU-CSO dialogue; define and address a number of human rights and democracy priority issues in the context of external human rights dialogues on which a better EU response can be provided.”⁵

It can be assessed that the EU undertakes to intensify the process of integrating human rights and democracy support policy (“mainstreaming”) into all aspects of its external actions, but especially in its enlargement process. Accordingly, the Union ensures that the issue of human rights, democratization and the rule of law is included in all meetings and discussions with the candidate countries at all levels, whether ministerial talks, joint committee meetings on accession or formal dialogues led by the Presidency of the Council or High Representative for Foreign Policy. EU ensures also that the issue of human rights and democracy is included in country strategy papers.

5. EU human rights and democracy support policy and the Western Balkans

From the legal point of view, the Union’s values that are proclaimed in the Art. 2 of the Lisbon Treaty (dignity, freedom, liberty, democracy, equality, rule of law, human rights and rights of minorities) are not only political and symbolic, but have concrete legal effects. Those values are set of conditions that a European state has to respect in order to be allowed to apply for membership. The Art. 49 clearly states that: “Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union.”

That is the reason that justifies that first Copenhagen criteria for EU membership, so-called political criteria, which includes rule of law, stable democratic institutions and respect of human and minority rights, is among all accession criteria “*primus inter pares*” (first among equals).

It can be explained through another non-formal criteria that exists in practice of the EU enlargement process, particularly in the last decade. It is an absorption capacity of the Union or integration capacity of the EU, which assumes the capability of the Union to accept new Member State without endangering the existing institutional and economic level of integration and the *Acquis Communautaire* (Gasmi, 125). The condition of preserving the *Acquis Communautaire* together with integration potentials and capacities proves to be very important for the EU when identifies priority candidate

⁵ Ibidem.

countries for financial assistance and timelines for membership. Ultimate goal is to prevent endangering of the existing level of integration within the Union.

Experience of the Western Balkans indicates that the EU considers that in those countries exist certain level of democratic deficit and the lack of the rule of law, which is more or less an assessment that often appears in yearly Progress reports for each of the countries, which prepares the EU Commission.

The most important traditional features of the rule of law are the following: to subordinate executive power to parliamentary laws, to have guaranteed rights of individuals to freedom of speech and appropriate legal process, freedom of assembly and association, then the judicial system as an independent and impartial guardian of laws and individual rights of citizens from possible attacks by legislative and executive power (Mitrovic, 156). A comprehensive list of human rights cannot be precisely defined and compiled today. It depends both on historical circumstances and on the existence of modern international instruments with legal obligations. For example, the Universal Declaration of the United Nations, adopted in 1948 as an optional legal document, is now legally binding, since many of the rights contained in the Declaration were incorporated into international treaties later, and that in most of the countries of the modern world, legal awareness for mandatory character of these rights prevailed. This means that the essence of human rights is not only positivistic, but also ethical. If legislators are tempted to abolish or seize them, then there is no rule of law.

Despite privileged treatment, modern democracy, based on the rule of law, today also have major problems in making civil and political rights more complete. This is especially true for human rights that are beyond strict internal jurisdiction and national state control. In that sense, it can be asked: in what ways do these obstacles comprise the difficulties and obstacles to ensuring the effective exercise of human rights and the path to democracy and the rule of law? (Mitrović D, 157). Democratic deficit can be described as the lack of legitimacy, which assumes that in the bodies of the legislative, executive and judicial authorities, there are no proportional representation of existing social groups - women, youth, members of national minorities, workers, and peasants.

Besides, the dramatic acceleration of the flow of information and money most often leads to lack of the legitimate decision-making about their flow, which facilitates the creation of invisible and uncontrolled decision-making centers of power that are largely moved from democratic legitimate institutions towards closed informal circles, without democratic cover and legitimate social control. Such recent changes that derive from globalization, have led some writers to grimly conclude that there has been "theft of democracy and the right to self-determination of legitimate participants" (Mitrović, 159) and the "modern form of totalitarianism" has been already established (N. Chomsky, 18).

The other Copenhagen criteria for EU accession include economic conditions: viable market economy, competitiveness of the candidate country and readiness to compete under equal conditions at internal market of the EU and legal conditions: harmonization with the EU law and *Acquis Communautaire*. This legal criteria includes the capability of candidate country to comply with membership obligations and to promote objectives of the Union, i.e. economic, political and monetary union. There is also an administrative criteria, adopted at the session of European Council in Madrid, 1995, which assumes adequate capacity of public administration of the candidate country to participate in functioning of the EU institutions (Gasmi, 124). The candidate country shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by an absolute majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account (Art. 49 of the Lisbon Treaty).

For Western Balkans countries, bilateral stabilization and association agreements are tailored made, which means in accordance with their internal economic and political situation for each country (Serbia, Montenegro, Bosnia & Herzegovina, Albania and FYR of Macedonia). Hence, the issues to be discussed during human rights and democracy dialogues are determined on a case-by-case basis.

However, the Union is committed to dealing with those priority issues, which are included on the agenda for every dialogue with candidate countries:

- international human rights instruments (signing, ratification and implementation);
- cooperation with international human rights procedures and mechanisms;
- combating the death penalty;
- combating torture;
- combating all forms of discrimination;
- children's rights (particularly in armed conflict);
- advancement of women's rights;
- freedom of expression;
- the role of civil society and the protection of human rights defenders;
- international cooperation in the field of justice, in particular with the International Criminal Court;
- promotion of democratization and good governance, the rule of law and
- the prevention of conflict.

The dialogues aimed at enhancing human rights cooperation with the EU may also include, according to the circumstances, some other issues, such as preparing and following up the work of the UN Human Rights Council in Geneva, of the Third Committee of the UN General Assembly in New York and of

international or regional conferences. EU Action plan on Human Rights and Democracy 2015 – 2019 calls for continue mainstreaming co-operation at the UN and other bilateral human rights fora; as well as to pursue closer cooperation and identification of joint actions, in particular with strategic partners; continue to press for universal adherence to international human rights standards. Additionally, the EU Guidelines on human rights are policy document adopted by the Council and they cover issues of special importance for EU Member States, such as combating torture and ban on death penalty and other matters.

EU guidelines are not legally binding, but because they have been adopted at ministerial level, they represent a strong political signal that they are priorities for the Union. Guidelines are pragmatic instruments of EU Human Rights policy and have several aims, namely to: a/ identify the role played by this instrument in the global context of the Common Foreign and Security Policy and the Union's policy on human rights; b/ strengthen the coherence and consistency of the EU approach towards human rights dialogues by analyzing on a case-by-case basis the added value of opening a dialogue on human rights; c/ facilitate use of that instrument by defining the conditions in which it is to be applied and made effective; d/ notify all relevant stakeholders, including candidate countries of this approach.

The perspective of the EU membership continues to act as a powerful incentive for candidate and potential candidate countries of the Western Balkans to undertake political, economic and legal reforms. This is particularly important in the fields of democracy, human rights, rule of law and good governance: the massive strides taken by them in democracy deepening process, judiciary reform, strengthening human rights protection, including rights of persons belonging to minorities and developing free media, are testimonies to the powerful positive influence of the EU accession process. The countries of the Western Balkans are part of the Stabilization and Association process (SAP), based on bilateral agreements, which was launched by the EU at the beginning of 2000. Preconditions for moving to the EU accession, *inter alia*, are respect for democratic principles, the rule of law, human and minority rights, fundamental freedoms and the principles of international law and successful regional cooperation. EU financial assistance is provided through the Instrument for Pre-Accession Assistance (IPA). SAP conditionality is monitored through annual Progress reports for each country of the Western Balkans, prepared by the Commission.

Conclusions – importance of EU human rights and democracy standards for the Western Balkans

The EU regularly discusses, *inter alia*, human rights and democracy issues with the countries of the Western Balkans region: at ministerial level – the Stabilization and Association Council meetings with the FYR of Macedonia, the Political dialogue Troika meetings and the ministerial EU – Western Balkans Forum; at officials level – the Enhanced Permanent dialogue (EPD)

with Serbia and with Montenegro in previous period; the SAP Tracking Mechanism (STM) with Kosovo; the Reform Process Monitoring (RPM) with Bosnia and Herzegovina and the Comprehensive Task Force with Albania. European Partnerships have provided each country of the Western Balkans with mid-term and short-term guidelines for further European integration. Those documents in the form of policy guidelines have identified priority reform domains in candidate countries of the Western Balkans and obligations to be fulfilled for moving closer to the EU. Human rights and democracy issues and the protection of minority rights constitute a political requirement under these partnerships. On the other side, the Western Balkans states have mirrored the partnership guidelines by drawing up national action plans for implementation, which provide for a clear agenda and commitment to respect human rights and democratic principles. Besides, the EU financial assistance is directed to the priority reform areas that had been set out in the partnership guidelines.

The reason for this kind of directing accession steps from the EU side are in the fact that the EU conditionality policy showed its limitations, being perceived as imposed instrument from the point of view of candidate countries. Therefore, European partnership guidelines proved to be more effective, since those policy documents took into account the ownership element of candidate countries.

However, the EU has launched the new initiative for the Western Balkans (February 2018) in the form of Commission Communication: "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans"⁶. Immediately after the launching this policy document, the President of the Commission, J.C. Juncker visited countries in the region and left with positive feedback, giving the impression of improvement in relations of the region with the EU.

In his 2017 State of the Union address, President of the European Commission Jean-Claude Juncker re-affirmed the European future of the Western Balkans countries:

"If we want more stability in our neighborhood, then we must also maintain a credible enlargement perspective for the Western Balkans. It is clear that there will be no further enlargement during the mandate of this Commission and this Parliament. No candidate is ready. But thereafter the European Union will be greater than 27 in number.

Accession candidates must give the rule of law, justice and fundamental rights utmost priority in the negotiations."⁷

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – „A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”, Strasbourg, 6.2.2018 COM(2018) 65 final.

⁷ Ibidem.

The EU conveys the following strategic message to the whole region of the Western Balkans:

“Addressing reforms in the area of rule of law, fundamental rights and good governance remains the most pressing issue for the Western Balkans. It is also the key benchmark against which the prospects of these countries will be judged by the EU. The region must embrace these fundamental EU values much more strongly and credibly. Their non-respect is also a deterrent to investment and trade. Strengthening the rule of law is not only an institutional issue. It requires societal transformation.”⁸

Fundamental rights are largely enshrined in the legislation of the Western Balkans countries, but more needs to be done to ensure they are fully implemented in practice. Particular focus is needed to safeguard the freedom of expression and independence of media as a pillar of democracy. Decisive efforts are needed to protect minorities and fight discrimination, notably against the Roma - for whom social inclusion should be more robustly promoted - and the LGBT community. Equality between women and men must also be ensured and domestic violence tackled ⁹.

According to the new EU Strategy for the Western Balkans of February 2018, strengthening the functioning of democratic institutions is essential. This includes ensuring constructive dialogue across the political spectrum, notably within the national parliaments. The government needs to ensure that the opposition has the possibility to fully perform its role. And the opposition needs to engage constructively in the democratic process. Elections should be free and fair and the recommendations of election observation missions properly implemented. The rules for the public and private financing of political parties also require substantive reform.

The EU evaluates that the core issues such as the rule of law, fundamental rights, strengthening democratic institutions, public administration reform, as well as economic development and competitiveness remain key priorities in the enlargement process. Implementation of the obligations stemming from the Stabilization and Association Agreements and other sectorial agreements will support preparations for meeting the requirements of EU membership.

Above mentioned guidelines for the Western Balkans states related to the human rights and democracy support policy of the EU are fully in line with the EU priorities at global level (37th session of the UN Human Rights Council)¹⁰ "In a year, where we mark the 70th anniversary of the Universal Declaration of Human Rights, the EU reaffirms its strong support for the work

⁸ Ibidem, p. 4.

⁹ Ibidem, p. 5.

¹⁰ From 26 February to 23 March 2018 the international community gathers in Geneva at the UN Human Rights Council (HRC) to discuss the world's most pressing human rights issues. https://eeas.europa.eu/headquarters/headquarters-homepage/40333/eu-priorities-37th-session-human-rights-council_en

of the UN human rights system," says Ambassador Peter Sørensen, Head of the EU Delegation to the UN in Geneva. Rights and freedoms are still being challenged and the space for civil society is shrinking in many countries throughout the world. Therefore, the EU gives strong priority to promoting and defending the universality of human rights and to raising the profile of human rights. On 26 February 2018, the Council adopted conclusions on EU priorities at United Nations human rights fora that the EU reiterates its strong position that all human rights are universal, indivisible, interdependent and inter-related.¹¹ Council conclusions on EU priorities at UN human rights fora are adopted on a yearly basis. They set out the main lines of action for the EU at UN human rights fora in the current year.

European Union officially expressed the view that in the coming years, all Western Balkan countries will have the chance to move forward on their respective European paths, on the basis of their own merits and at the speed at which they achieve them. Montenegro and Serbia are the current front-runners in the process (2018)¹².

Finally, it is to be reiterated that the EU policy on human rights and democracy, in the way it is defined in the Lisbon Treaty, is significant not only for the EU citizens, but also has direct impact on the EU enlargement process and other EU external activities in two-fold manner. Firstly, the human rights and democratization issues are included into general principles of the EU law, especially after entering into force of the EU Charter on Fundamental Rights (2009), being the integral part of the Lisbon Treaty on EU, as well as the EU obligation to accede to the European Convention on Human Rights (ECHR) of the Council of Europe. Second aspect is mirrored in the great extent to which the human rights and democracy legal principles are promoted in the EU enlargement process, as well as in other EU external actions, such as trade, humanitarian aid and other sorts of the EU development cooperation, to the migration issues.

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