Brexit and the renationalization of the Human Rights protection: the way backward?

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Abstract: *Parliamentary elections of 2015 shifted UK closer to the possible exit from the EU. This unprecedented step will have significant impact on the UK legal system including the protection of human rights as the ties between national and European level may disconnect or change the procedures and principles applied. This article claims that possible UK withdrawal from the EU will significantly challenge the level of human rights protection due to closing direct path to international level and limiting the jurisdiction of ECJ. In the worst case scenario the UK might become a closed system with decreasing quality of human rights protection.*

Key words: *Membership in the EU, United Kingdom, protection of the human rights*

In May 2015 the Conservative Party leader of the United Kingdom, David Cameron was re-elected. His voters and political adversaries will be closely watching how their Prime Minister keepspromises which were made andwhich also helped him

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win re-election. Among many, to hold until the end of 2017 a referendum about Britain's membership in the EU.Despite Cameronbeing in favour of staying in the European Unionand many politicians and public known figures are alsoin support of this idea, voter's opinions may change in time as well as political support of EU withdrawal.[1] In other words until the last voting room is closed nobody can predict the results. In this article we assume the worst-case scenario, that the UK referendum will vote in favour of EU exit and the government will use the right of member state granted under the Lisbon Treaty under article 50 TEU to leave the EU. It will be an unprecedented step which will affect all aspects of the United Kingdom political life and will have a significant impact on the UK legal system including the protection of human rights.

The aim of this article is to analyze possible outcomes of the UK exiting from the EU in the context of human rights. It is divided in three parts. In the first part, we explore the human rights protection landscape and the way how international dimension is affecting HR protection within the UK. The second part is dedicated to the consequences of the exit from the EU in the field of human rights. The third part is presenting an alternative of re-nationalization of human rights protection in the UK by adopting new statute and analyzing possible related challenges. In this article, we argue that the UK exit from the European Union will have a negative impact on the protection of human rights due to isolation of international level of protection from on a national level. And because of the complex and developing nature of human rights it may be insufficient to guarantee human rights separately from the development within EU legal system or worse, without any direct connection to international scrutiny.

Mapping the landscape

It is not exaggerated to claim that EU member states are well integrated within the most comprehensive system aimed at the protection of human rights. It is due to historical reasons and the unprecedented violence and cruelty of WWII. This caused that post-war consensus where governments not only recognized and feared a repetition of those atrocities but also tried to seek and implement a new system where basic rights would be protected and mass abuse prevented. In these first early years institutions were built including the Strasbourg based European Court of Human Rights (ECHR). The United Kingdom ratified the Convention on Human rights in 1951 and since then ECHR is an important body guaranteeing higher level of human rights protection in the UK.[2] In between 1959 (when ECHR was established) and 2013 ECHR made 499 rulings regarding the UK, while 297 judgments found at

least one violation of the European Convention on Human Rights (ECHR 2013). In this sense, ECHR is not only protecting individual human rights but also correcting political decisions affecting the society as a whole.

There are many practical examples affecting daily life in the UK. For example in the 1986 case *Rees v. UK* the ECHR ruled in favour of trans gender citizens and allowed them to change their legal gender or in 2008 case *S and Marper v. United Kingdom* the ECHR ruled against the police authorities to store the DNA of innocent people on their database. In one of the latest cases the ECHR ruled against dismissal for the membership of a political party (*Redfearn v. UK*). Contrary to many judicial successes, there is far reaching criticism which partly corresponds to obsolesce of 1950s system, case selection, delays in review or decisions enforcement. However, these problems are nothing but necessary evil of international organizations and the value of such institutions overwhelmingly exceeding associate shortcomings. In this sense, we disagree with a slightly provocative article written by Andrew Williams (2013), which is however inspirational for its thoughts. ECHR is not an appeal court, but rather serves as international body dealing with individual complaints of those who exhausted remedies under national law.

In the UK European Convention for the Protection of Human rights has been implemented by the Human Rights Act of 1998 (HRA). Section 2 HRA requires all domestic courts to take into account decisions of ECHR. However, this is not interpreted as legal obligation that courts have to follow the ECHR decisions. Moreover, ECHR Committee of Ministers has just political tools to enforce ECHR decisions. Due to its limits ECHR and European Convention for the Protection of Human rights plays one way connecting UK protection of human rights to the international scrutiny.

After the UK's entry into the EU in 1973 the international level of human rights protection increased by opening second way to the international scrutiny. The UK as an EU member state had to obey the rulings of Luxembourg's based European Court of Justice, which already four years earlier made its famous ruling in the case 29/69 *Stauder vs. Ulm*.[3] Despite the fact that there is no single provision in the EEC Treaty affecting human rights of individuals and ECJ requires "direct and individual" concern of violation, the importance of ECJ in the human rights protection has been increasing (Defeis 2007: 1116) and now evolved into comprehensive system including EU Charter of Fundamental Rights which became legally binding with the entry of the Lisbon Treaty into force in 2009. The nature of ECJ differs from the ECHR as it does not deal with individual complaints against alleged breaches of European Convention for the Protection of Human Rights, but rather ECJ interpret the EU law and rules about EU treaties violation. It mainly deals with requests from national courts during preliminary ruling procedure in order to interpret some provisions

or decide about validity of EU institution acts. ECJ is not appeal court and cannot decide in merits. Decided point is referred back to the national court which is applying the decision of ECJ to the relevant case.

UK's entry into the EU made the human rights protection landscape more complex and created a comprehensive, however, complicated environment with several issues and implications for the UK. First, we may look at the relationship between the UK and the ECHR, second, the relationship between the UK and the ECJ and third, the relationship between ECHR and ECJ as there is possibility established by the Lisbon Treaty that the EU may become party to ECHR.

In the first issue, it is important to note that while in monist systems (including most of continental Europe) international treaties are only subject of ratification and then becoming binding in domestic law when they are self-executing in dual systems such as the UK treaties must be incorporated in order to have effect on domestic legislation. In other words, international treaties are not part of common law unless implemented by the Act. Thus the UK common law system is of a closed and protective nature towards international level. And when needed active step regarding implementation is necessary for transposition. However, without implementation treaties may not have interpretative value. Thus, the jurisdiction of ECHR is limited as the Convention is not part of the UK law and decisions of ECHR are not directly legally binding. ECHR does not require Parliament to legislate compatibly with the Convention nor are the national courts obliged to disregard national laws which are incompatible with the Convention (Eckes 2013: 276). The Convention on Human rights has been implemented in The Human Rights Act of 1998 and the section 2(1) requires UK courts to take into account the jurisprudence of the European Court of Human Rights, however it is up to the judiciary to decide how much weight to accord to it (Douglass-Scott 2006: 652).

Similar problems arise regarding the second issue. The EU Charter is part of the EU law and as such has given effect in national law trough European Communities Act (ECA) of 1972. This created new legal framework for the protection of human rights, different to the Convention on Human Rights. Even in this area, the relationship between "supranational" and "national" level was not always clear in the area of human rights. Supranational institutions (European Court of Justice included) always caused tensions which encouraged constitutional courts in the member states to clarify the relationship between EC and its member states.[4] In this sense is complicated also the position of the UK towards the EU Charter. The official position during negotiations was quite negative or minimal.

UK chief negotiator Lord Goldsmith has been given three objectives: First, the UK Government agreed with the need to make fundamental rights applied by the Court of Justice more visible, principally to act as a constraint on the EU institu-

tions should it be necessary. Second, the Charter should be careful not to create new rights (especially economic and social) and third, it should not make economic and social rights justifiable where they are not already justifiable (House of Commons 2014: 15). When the content of the charter turned from political text to legally binding provisions, the UK and Poland succeeded in approval of protocol 30, which is limiting (or better clarifying) the jurisdiction of the Court of Justice of the EU. However, according to Lord Goldsmith rather than an opt-out, Protocol 30 is a guarantee, which was later supported by "all the experts" (House of Commons 2014: 21, 29). Protocol 30 has thus more interpretative stance and brings more uncertainty into the effect of the EU Charter in the UK. The House of Commons concluded in its report, that the Charter is directly effective in the UK by the virtue Section 2(1) of the ECA and has supremacy over inconsistent national law or decisions of public authorities, by virtue of sections 2(4) and 3(1) of the Act (House of Commons 2014: 50).[5] In this sense, it has the interpretative and enforcing function of EU law, however only within the law which is in the scope of the EU law. Despite EU Charter has its effects based on the ECA, the exact nature of this effect is not clear (House of Commons 2014: 11). Moreover, the UK together with Poland and initially with the Czech Republic opted out for specific chapters.

The third issue comes from the difference and possible merger of two systems at international level and their further interaction. In the history both courts solved similar cases with different results[6], cited each other[7] or overlapped (for detailed relations see Douglas-Scott 2006). Although the Treaty of Lisbon opened the possibility of the EU accession to ECHR, it is still unknown how this process will be executed and the "institutional dichotomy" may continue. However, current status quo is not at all negative as two institutions working in a different legal system (currently only indirectly connected) are more than one court. On the other hand where both systems overlap, judgments of both institutions may lead to tensions as demonstrated by Paul Arnell on the case of extradition. While extradition helps to efficiently and effectively deal with international criminal justice, human rights in this case protects individuals from egregious state action, fortunately in small number of cases (Arnell 2013: 336). Even when the protection of human rights in the EU is developing very fast, latest cases has proven that it is far from finished.[8]

There is some inconsistency between the Convention and the Charter which is considered as more broad in the scope. However, despite the lack of clarity caused by Protocol 30 and the nature of the Charter, both documents embodied a catalogue of human rights which is affecting the level of human rights protection in the UK.

Cutting the ties

In the case of withdrawal the EU member state shall notify the European Council of its intention. As mentioned in the Article 50 TEU, in the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union (Article 50.2). Even when there is no ex post experience with the process, it could be expected that negotiations will be similar as in the case of EU accession. During the divorce both actors will focus on finding best modus Vivendi in separate chapters where acquis applied, trying to maximize the benefits. In this sense it could be expected that withdrawing state will to the certain degree participate on the EU activities such as internal market, transport networks or financial markets regulations. Under the agreements set forth within the Lisbon Treaty, The United Kingdom would be required to set out a mandated manifesto which would encompass all of the relevant detailed arguments & information surrounding the proposed withdrawal from the European Union. This manifesto and its content would be something that would be of great concern to those both north and south of the border in the United Kingdom taking into consideration the devolution agreements that were agreed upon during the referendum which took place in Scotland in 2014 as there were discussions and agreements that were to be upheld by the Westminster government (Brooks, 2015). In other words, EU withdrawal may accelerate centrifugal tendencies on the UK territory.

Moreover, sooner or later the UK will have to repeal European Communities Act of 1972. With the possibility of the UK exit from the EU there would be a new Act outdating ECA and most probably temporally preserving all norms implemented during EU membership until changed. In this sense the UK will slowly lose one direct branch from the external dimension and the direct influence will be transformed to interpretative influence, similar to the European Convention for the Protection of Human rights. However, even second direct branch leading to the external dimension represented by ECHR may be weakened as there are voices calling to repeal of HRA (UK Parliament 2015).

If the United Kingdom were to leave the European Union this could in hindsight have an adverse effect on how the United Kingdom deals with Human Rights matters without the rule of the European Court Of Human Rights. The United Kingdom as a supreme governing body in its own Human Rights laws would be something that could be seen as weak in the eyes of the common European framework for Human Rights, although this is something that could be seen as complete political and parliamentary sovereignty in the UK.

If the UK were to leave the EU and abolish the Human Rights Act this would see their position on Human Rights cases in other countries less important and that they

themselves would create and contribute to a weakened approach to Human rights that could be adopted by other countries due to their own practices in this matter. If the United Kingdom were to abolish HRA, this would be in some cases a huge advantage for the government of the UK as this would be seen as the government cutting the formal ties between the ECHR and British courts although there would be the case of domestic and international law that would pose questions of repealing the act in the United Kingdom.

There are a number of agreements in place that would then be under serious scrutiny that the UK has in place with other countries." The Good Friday Agreement and the Sewel convention which would require the consent of those countries under those agreements for the UK to fully repeal the HRA as it was required under law to be included in agreements put in place for matters such as the peace process in Northern Ireland. If the UK were to repeal the HRA act there would be a real and strong case for different regimes of human rights that would be in effect in different parts of the United Kingdom.

The supreme court rulings of the UK would reign supreme if the HRA were to be repealed due to the ECHR being unable to overrule (or at least politically influence) decisions made by British courts in matters of Human Rights and would not be able to force or dictate any change in the UK law. However, challenging the ruling given by the British supreme court could still be brought before the ECHR in Strasbourg for an appeal decision although the procedure would be made a lot more difficult and also take a lot longer to be heard (Douglas, 2002). This issue is also reflected by watch dog groups. If this were to happen, according to ShamiChakrabarti, director of human rights group Liberty, the proposal "is the gravest threat to freedom in Britain since the Second World War" (Bloom 2015).

The global issue of Human Rights would be called into question with the UK threatening to rewrite its own laws on the subject paving the way for other countries to weaken their stance on Human Rights issues which would have a devastating effect on global democracy. There are grave concerns regarding the UK's intention to limit the ECHR or completely withdraw from the HRA altogether would have an incomprehensible backlash for the United Kingdom both at home with the Welsh and Scottish Governments and abroad with international community seeing the UK's stance seriously questioned on Human Rights matters. This could see the UK internationally deemed to be on the same level as Greece who left the convention in the 70s whilst under military rule or even worse to be associated with the brutal dictatorship of Belarus who are currently the only country within Europe who are outside of the convention.

Whilst changes to the Human Rights act in The United Kingdom would be seen as a positive change in the eyes of some politicians and their parties, these changes would have a severely damaging effect across Europe for the rights of European citi-

zens that are currently under the jurisdiction of the institution that has secured the rights for millions of its citizens. Governments in other countries that have aggressive and abusive leadership tactics towards the rights of citizens would meet the UK's decision with joy in the sense that it would be in someway contributing to the acts of Human Rights atrocities that are being enacted by some countries even within the European land mass.

There may be great normative impact of both UK EU withdrawal and HRA repeal setting negative example to the international community.Looking at this from a historical and political point of view there would be a very strong case for those to point out that the UK who has always been seen and known to be a country which has been at the center of the Human Rights development would suddenly be seen as a country that is perhaps beginning to state and portray a strong sense of disagreement with its prior adherence to human rights law by stating that maybe those issues and rights are not so important anymore for the United Kingdom (Home & Meaer 2015). This would also discredit the ECHR with those states whom are already meticulously slow in enforcing the rulings that have been ruled in Strasbourg, This would also pave the way for other countries to feel that it would be acceptable to leave the ECHR as a direct result of what has been proposed by the United Kingdom. In the case of the United Kingdom leaving the ECHR there is the underlying fact that the reason it was introduced initially was to protect fundamental values which were heavily fought for during the Second World War and that this institution was drafted and brought into force to protect those values, something which the United Kingdom advocated for heavily.

It could be said that the effects of the repeal of the ECHR by the United Kingdom could be the catalyst for the decrease and overall drop in the level of Human rights that we have come to regard as a natural right to every human, there are countless arguments that would oppose and also countless arguments that would be for the repeal of the ECHR but conflict of opinion is something that should not and cannot be the reasons for the diminishing rights against those who have come to rely on a system that has been in place for more than sixty years for the basic right and protection against vulnerability, neglect, abuse, torture, slavery, rights to fairness and equality, right to expression and to be free from discrimination (ECHR 2012). This is a question that must be posed to the United Kingdom on its view to leaving the ECHR, would any right minded person who is civilized have any objections to rights of this magnitude being enforced.

Unfortunately, there is wide spread conflicting interests in the United Kingdom at the present time with regards to the ECHR and the HRA. The views held by all four parties are somewhat clouded and obscure. The conservative party andlabour party figures have in the past been skeptical in light of the support which they have shown towards Europe and there has also been contrasting opinion of this ongoing issue

which has dated back to the 1970s (Smith 2014).It remains a huge question of whether the United Kingdom will take the step of repealing the ECHR by adopting their own version in the bill of rights, this could be seen as the United Kingdom which has been a voice in advocating human rights actually being seen as the country which most people least expected as delving it's self into a constitutional crisis.

Renationalization of human rights

Cutting some of the ties with the EU and possible revision of the UK relation to the ECHR will increase the pressure for adoption of new statute on human rights. In this sense, the outcome of cut ties might be not as dramatic as depicted above, however creating new statute may present another sort of difficulties. Probably the first reason is political attitude towards human rights which may change significantly over time. The UK government had in the history rather negative attitude towards human rights during negotiations of key international instruments, including EU Charter of Human Rights. During its negotiations of the Charter, the UK government on several occasions demonstrated that is not open to the extension of guaranteed human rights. Another example is follow-up of 2005 *Hirst v. United Kingdom(No 2)* ruling where ECHR found that UK's blanket ban on prisoners voting violated Article 3 of Protocol 1 and the UK ministers developed various strategies to resist the decision enforcement (Tickell 2014: 290). While courts established positive dialogue with ECHR (Amose 2012) the government who had to pay costs of human rights protection may enter to negative relationship with the ECHR.

Second, similarly to the Charter, the creation of such statute will be necessarily influenced by political situation, which (in the case of immigration crisis for example) may not fully match high standards. Moreover, as the negotiation of Charter showed, defining the scope of human rights protection is very complex and uneasy work. In other words, quality of such statute may be low, partial or incomplete as it is challenging to create wide-ranging and clearly oriented statute somewhere between minimum and maximum standard of protection (Andreadakis 2013: 1192). This challenge will be of greater importance since there will be no direct international influence on human rights protection. Britain could simply slither down and not match international standards. The first place affected would be the UK citizens who would lose the instance for their case (Williams 2013: 1184).

Exit from the EU will have one more negative impact as UK government and legal system will not be under the supervision of the European Commission who as a "treaties protector" plays an important watchdog role also in the field of human rights. This is for example the case of Aberthaw coal plant in Wales which is found to be over allowed limits. As toxic fumes cause 1600 premature death in the UK alone,

it is expected that at least two infringement cases against the UK will come to the ECJ before March 2017 (Neslen 2015). As Andrew Williams (2013) pointed out, there is Article 7 TEU[9] which provides a political means for condemning Member States for human rights abuse (Williams 2003: 1185). Despite Williams being rather pessimistic about prospects of such deployment, it is important to note that Article 7 has been considered in the case of Austria after Freedom Party of Austria under Heider leadership received in October 1999 27 % of popular votes, in the case of Hungary after Orban's 2012 constitutional reform, in the case of Romania or in 2010 in the case of France (Budó 2014). It is important to note that even when Article 7 is not activated, there might be negative political consequences for the considered member state.

Next to the material part of the issue there are also procedural challenges as the statute is interpreted and applied by the courts. Due to lose of international scrutiny, national courts will have increased responsibility in the correct interpretation of new statute. The UK legal system has well developed rules and aids of statutory interpretation and application of precedents. However, courts are limited due to strict separation of powers and supremacy of Parliament doctrine. In order not to limit the Parliament, the UK Government decided in 1953 not to incorporate the Convention into the UK law in order not to create framework for challenging the validity of legislation (Wilson et al. 2014: 221). And even when Convention was later implemented under HRA, Section 6 reserves the parliament the right to act incompatibly with the Convention.

Similar limits of the Conventions are followed by the courts, especially in the cases when ECHR decision is in conflict with domestic precedent. In this situation the practice of the UK courts rather ambiguous and the precedent value is not clear as noted by Joseph Jacob (Jacob 2007: 35). This is well illustrated by the speech by Lord Bingham in the case Kay and Others v Lambeth Borough Council who on the one side stated that ECHR is the "*highest judicial authority on the interpretation of rights*," but on the another side added that certainty will be best achieved "*by adhering, even in the Convention context, to our rules of precedent*" (Kay v Lambeth LBC; Price v Leeds CC). As later added, only in serious situations should UK courts depart from their earlier precedents. As later added, only in serious situations should UK courts depart from their earlier precedents which resulted in rather exceptional application (Pattinson 2015: 143). This interpretation is however positive in the aspect of conservative development of human rights protection in the case that HRA will be repealed and lead us to the issue of interpretation.

Under section 3 of HRA national courts have obligation to interpret domestic statue in a way that reflects the Convention. Traditionally there are many interpretation techniques under common law, including literal approach, golden approach,

and mischief, purposive or interpretative approach. Interpretation technique may influence the understanding of the purpose and the context of the norm. Under interpretative approach which is used for the interpretation of the Convention, the court is allowed to interpret language restrictively or expansively so the Convention will be compliant with the national legislation. In other words, judges may give to the words new content or meaning so far unless they touch "fundamental feature of legislation" or they are not exceeding institutional capacity and touching e.g. rights of the Parliament (Geiringer 2005: 10). In this sense restrictive interpretation of legislation may limit human rights to the high extent. However, on the other side, there are secondary rules and aims to interpretation such as that Parliament will not interfere with a person's private rights or property without compensation, there will be no criminal liability without proof of necessary *meansrea*, unless otherwise stated or that binding international legal obligations will be adhered to. In other words, protection of human rights is partly content of the aids to interpretation itself. As pointed out by Lady Hale: *"The common law may not offer a prescriptive list of rights but this does not mean that it is not a rich source of fundamental rights and values, nor that its development has been somehow arrested once the Convention was incorporated into domestic law"* (Hale 2014: 201). The UK system may have enough material and procedural guarantees to human rights protection; on the other hand, if we take in to account the previous decisions of ECHR, the loss of international scrutiny may influence many issues. As the cases of *Redfearn v. UK* or *Gillan and Quinton v. UK* shown, even when all 13 judges agree that human rights are not violated, the ECHR ruled opposite (Metcalfe 2011). Rulings of ECHR are not only normative source of authority, but also first indicator that legislative may be wrong. According to Helen Keller and Alec Stone Sweet current system has ability to indicate possible gaps within domestic law. Authors argue, that the number of applicants to the ECHR helped in some cases to identify the gaps (Keller, Stone Sweet 2008: 691).

What could the UK possibly gain from leaving the EU and adopting its own Human Rights Act "The Bill Of Rights"? The UK would gain greater autonomy on decisions such as deportation and terrorism, although as mentioned earlier this would in no way alter the legal obligations of the United Kingdom (Rozenberg 2015). If The UK were to cease in the convention then it´s citizens would no longer have the right to take the government to the Human Rights court in Strasbourg which has previously been the case and something which has been in effect since the late 1960s.

It is safe to say that there is not an easy way for the UK to gain full control of its HRA without some form of international condemnation whether it comes from powers within the European Union or from those countries which are tied with the Sovereignty and nationalism of the United Kingdom, Northern Ireland, Wales and Scotland or even internationally from countries that would oppose their stance on

changing their HR laws which would be seen as a weakening of the fundamental rights of people which were put in place after the atrocities of the second world war (Perraudin 2015).

The UK would not want to weaken its position in the international community, especially on a subject such as the Human Rights of citizens for which it has been a strong advocate historically "Magna Carta 1215" or "the Bill of Rights" or "Claim of Right in 1689" even in the direct way that the UK influenced the creation and drafting of the Convention and how it also became the first nation to ratify it would greatly diminish their historic involvement in their stance against the horrors of the 1940s ever being repeated. This would also pose the questionsof whether the UK would remain as part on the EU Council not being bound by the Convention, Not a single country has ever gained entry to the EU without first being part of the Council for Europe.

The dangers which are closely associated with the repeal of the ECHR are that the fundamental right of people to challenge the issues of abuse, mistreatment or neglect for which they feel affected by would be diminished. The question of crimes against humanity an especially those in the UK would be at risk of going unpunished under the new proposed "Bill Of Rights" and the people who are suffering from these unquestionable crimes would be the people who would suffer more than they are now with their vulnerability increasing with rights called into questionable debate. If the UK were to leave the European Union and adopt its own laws then the way in which these laws were applied would seriously be called into question and their integrity scrutinized, The United Kingdom would be sending out the wrong message to dictators all over the world by creating their own "Bill Of Rights" to assume control over the decisions made by the ECHR and also leaving large portions of the population unprotected (Find Law 2015).

Conclusion

The biggest disadvantage of a possible EU exit by the United Kingdom seems to be the loss of an external watchdog represented by European Commission and the loss of international scrutiny. This might be dangerous in combination with ECHR decreasing roles within the UK protection system of human rights and possibly lead to multiplication effect in degradation of human rights protection. Renationalization may soon lead to isolation and make judicial independence more prone to domestic political pressures.

The responsibility will be on the Parliament to prepare new statute regarding human rights and the courts to allow and keep extensive interpretation of the rights.

Both the creation of the statute and its interpretation may be challenging tasks. Political crisis may lead to poorly prepared Bill of Rights and in the worst case scenario this statute may be interpreted restrictively and due to closed nature of the UK legal system also without any influence of international courts or institutions. On the other side, the level of interpretation and application of law regarding human rights may remain almost untouched due to precedent nature of UK legal system. However as cases brought before ECHR and ECJ shows, international scrutiny matters and possible divorce with the EU will have rather negative effect on the human rights protection in the UK. There is also normative level of possible renationalization of human rights protection in the UK as the country may set negative example to the international community. While the UK has well balanced system and legal tradition developing for centuries and renationalization thus may have only marginal impact, for countries with unstable political environment and their populations the inspiration by similar step may be fatal.

Notes

1 In 1974 Harold Wilson promised to held referendum on EC membership and renegotiate conditions agreed by Edward Heath conservative government.

2 In 2014 Court dealt with 1 997 applications of which 1970 were declared inadmissible or struck out. Court delivered 14 judgments concerning UK of which 4 found at least one violation of the European Convention on Human Rights (ECHR 2015).

3 In this case the European Court of Justice for the first time stated that it express the respect of fundamental human rights. It was contrary to previous rulings where human rights issues were not accepted by the Court.

4 See for example famous Judgment of the Court of 17 December 1970. – Internationale Handelsgesellschaft GmbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel. – Reference for a preliminary ruling: Verwaltungsgericht Frankfurt am Main – Germany. – Case 11–70 and its importance for creation of "So lange" doctrine.

5 Section 2(2) means that provisions of EU law that are directly applicable or have direct effect, such as EU Regulations or certain articles of the EU Treaties, are automatically "without further enactment" incorporated and binding in national law without the need for a further Act of Parliament. Section 2(4) and 3(1) give effect to the doctrine of the supremacy of EU law, as interpreted by the Court of Justice, over national law; and where EU law is in doubt, requires UK courts to refer the question to the Court of Justice.

6 Compare: Judgment of the Court of 21 September 1989. Hoechst AG v Commissionof the European Communities.Joined cases 46/87 and 227/88 and Judgment of the Court from 16 December 1992 in the case of Niemietz v. Germany (Application no. 14710/88).

7 See for example: Judgment of 28 October 1975, Roland Rutili v Minister for theInterior, Case 36/75 or Judgment of the Court of 13 December 1979. Liselotte Hauer v Land Rheinland-Pfalz.Case 44/79.

[8] For example in the Kadi case the European Court of Justice formulated supremacy principle of fundamental rights over the acts of all international organizations including UN (Šišková 2009). ECHR ruled same decision in Nada case, however using different technique or argumentation (Wet 2013).

[9] Article 7 of the Treaty on the EU sets up a mechanism in order to guarantee the protection of EU core values. It works as an early warning system which allows establish sanctions for violation. However, enforcement of this article is often criticized due its political sensitivity and requirement of unanimity vote among EU member states (including member state suspected for violation).

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