

UDC 341

**PROTECTION OF HUMAN RIGHTS IN THE COURTS OF EU AND EAEU  
INTEGRATION ASSOCIATIONS**

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Universal respect for human rights and fundamental freedoms is one of the universally recognized principles of international law. As noted in the literature, today the interaction of national legislation on human rights with international law is so expanded that the generally recognized principles and norms of the latter and international treaties become an integral part of the current law, have direct effect on the territory of Kazakhstan and priority in relation to national laws [1].

The development of integration processes leads to the fact that the supremacy of human and civil rights and freedoms is not guaranteed not only in each specific state, but also guaranteed for supranational level. This process is clearly illustrated international agreements mediating the creation of the Customs Union and the Common Economic Space, and the Eurasian Economic Union.

Development of the Institute of Human Rights and Fundamental Freedoms on the Eurasian space is at the beginning of its journey, despite the fact that the integration process itself has more than 20 years. Analysis of international legal acts based on which the Customs Union and the Common Economic Space have been formed space, and then the Eurasian Economic Union, demonstrates evolution of mechanisms for securing human rights and fundamental freedoms in the post-Soviet space.

The aim of the study is to examine and determine what the content and how the jurisdictional protection of human rights is implemented at the level of the European Union and the Eurasian Economic Union.

When studying this topic, four main objectives were identified: first, the study of the features of the formation of the principle of human rights protection in the law of the EAEU and the EU; second, the consideration of the place and role of human rights provisions in the legislation of these associations; third, an analysis of the practice of the Courts, which allows to answer the question of what is the role of the court decision in the system of sources of law and the protection of human rights in the framework of integration associations; fourth, what are the possibilities of overcoming and resolving controversial or complex situations that arise in the process of protecting human rights in the integration space.

Methods that were used when writing a scientific article: analysis of international and national legislative acts, comparison of legal norms of different States and integration associations, historical and legal method, as well as theoretical and legal forecasting.

The article's bibliography includes textbooks, scientific articles, monographs, national acts and international agreements, and official websites of international organizations, as well as decisions of the courts of integration associations.

The following international agreements are key documents that form the legal system of the EAEU in the field of human rights protection:

-Agreement on the Customs Union between the Russian Federation and Republic of Belarus of January 6, 1995

The preamble to this Agreement contains the wish to Contracting parties «to ensure the further development of rights and freedoms of the individual and citizen of countries based on democratic principles, recorded in the documents of the UN».

-Agreements between the Russian Federation, The Republic of Belarus, the Republic of Kazakhstan and the Kyrgyz Republic on deepening integration in the economic and humanitarian areas of March 29, 1996;

- Agreement on the Eurasian Economic Union of May 29, 2014;

-Agreement on ensuring free and equal rights individuals crossing the borders of member States Customs Union and their free movement of goods and services currencies of November 24, 1998;

- Agreement on granting equal rights to citizens States parties to the Treaty on deepening integration in economic and humanitarian fields of March 29, 1996 on admission to educational institutions of November 24, 1998;

- The agreement on creation of favorable conditions for employment small business in the States parties to the agreement on deepening integration in the economic and humanitarian fields dated March 29, 1996, signed in November 24, 1998, etc.

The listed agreements and protocols relate to such rights and fundamental freedoms such as the right to health, freedom of movement, and freedom entrepreneurship, freedom of information, and the right to education.

### **1. Protection of human rights in the EEU. Legal framework.**

The first document on the way to economic integration in the post-Soviet space is the Agreement on the Customs Union between the Russian Federation and the Republic of Belarus of January 6, 1995. The preamble to this Agreement sets out the desire of the Contracting parties «to ensure the further development of human and civil rights and freedoms of countries based on the democratic principles set forth in UN documents» [2].

The next milestone on the way of Eurasian integration was the signing on 29 March 1996 Agreement between the Russian Federation, Belarus, Kazakhstan and the Kyrgyz Republic about deepening of integration in economic and humanitarian fields.

Article 2 of this Agreement explicitly States that the main goals of integration are to consistently improve living conditions, protect individual rights and freedoms, and achieve social progress [3].

Subsequently, the Agreement of February 26, 1999 on the Customs Union and the Common Economic Space is adopted.

There is no direct reference to the protection of human rights and fundamental freedoms, but there is a rule on the free movement of citizens of member States within the Common Economic Space, which implies the abolition of any discrimination against citizens of the Parties and the creation of a unified legal regime in terms of employment, remuneration, other working conditions and employment (article 39) [4]. It is particularly noted that the Parties will sign relevant agreements for this purpose.

The next act that fixes the intentions of States to strengthen integration processes is the Agreement of September 19, 2003 on the formation of the Common Economic Space. It does not mention human rights and fundamental freedoms, but States that the basic principles of the Single economic space are ensuring the freedom of movement of goods, services, capital and labor across the borders of member States. The creation of a Customs Union and a single customs territory is formalized by the Agreement of October 6, 2007 on the creation of a single customs territory and the formation of a Customs Union. This document is aimed at regulating the narrow sphere of cooperation-ensuring the free movement of goods in mutual trade, and does not mention the protection of human rights and fundamental freedoms.

The Declaration of November 18, 2011 on Eurasian Economic Integration, which sets out the intention of the Parties to create the Eurasian Economic Union by January 1, 2015, proceeds from the fact that the Common Economic Space is based on the principles of compliance with generally recognized norms of international law, and the assertion of fundamental human rights and freedoms.

The Treaty of May 29 2014 on the Eurasian Economic Union (hereinafter – the Treaty of Union) points directly to the establishment of the Union on the basis, including the necessity of respecting the rule of constitutional rights and freedoms of man and citizen aimed at the creation of conditions for stable development of the economies of member States to improve the living standard of their population. Thus, the rights and freedoms guaranteed by these international legal acts are included in the legal system of the Eurasian Economic Union.

Today, the situation with human rights and fundamental freedoms in the Eurasian space can be characterized as legal pluralism - the coexistence of two legal systems in the same geographical expanse. This is because, as described earlier, the acts of Union, as well as through the perception of the constitutional traditions of the member States formed its own Institute of human rights and fundamental freedoms and at the same time two States of the five are parties to the Convention on the protection of human rights and fundamental freedoms of 4 November 1950.

In its first decision of 5 September 2012 in the case of the South Kuzbass Coal company, the EurAsEC Court, assessing compliance with the pre-trial dispute settlement procedure, expressed an unequivocal commitment to article 6 of the Convention on the right to a fair trial, without directly referring to it, but pointing out that the lack of access to an effective pre-trial method of resolving disputes led to a violation of the applicant's rights to access to justice.

Given the competence of the Union in the resolution of disputes according to statements of economic entities (legal entities and individual entrepreneurs of the member States and third States; subparagraph 2 of article 39 of the Statute of the Court), it is clear that the protection of human rights and fundamental freedoms in terms of their economic component is included in the competence of the Union. With regard to the powers of the Court to explain the provisions of the Treaty, international treaties within the Union and decisions of Union bodies related to labor relations, on the application of employees and officials of the Union bodies and the Court

(paragraph 46 of the Statute of the Court), it can be said that The court of the Union protects social human rights.

## **2. Human rights and fundamental freedoms as generally recognized principles of European Union law**

Respect for human rights on a par with the rule of law and democracy is one of the three pillars of the EU that are the common accordance with article 2 of the Treaty, «the Union is based 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» [5].

Currently, the protection of human rights in the EU is guaranteed at the national and international legal levels, as well as in accordance with the Charter of fundamental rights of the European Union - within the EU.

National remedies are provided in accordance with the constitutional systems of member countries. International protection of fundamental rights is carried out through mechanisms provided for by a number of universal and regional conventions to which EU States are parties. For example, all EU countries participate in the optional Protocol to the International Covenant on Civil and Political Rights of 1966, which provides for the powers of the Human Rights Committee to consider individual appeals of individuals in connection with violations of their rights. Such bodies also include the Committee Against Racial Discrimination, the Committee on Women's Rights, the Committee Against Torture, etc.

A special place among such international remedies is occupied by the ECHR, which operates under the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. All member States of the Union are now members of the Council of Europe and recognize the jurisdiction of the ECHR on violations of the rights guaranteed by this Convention. However, as with other international mechanisms, only the actions (omissions) of national authorities can be considered in Court. It is impossible to challenge the activities of EU institutions in such interstate judicial and non-judicial structures, because only countries, and not the EU itself, are parties to the relevant international agreements.

The creation of an international judicial body similar to the ECHR for the CIS and EAEU countries is relevant. This could contribute to the effective protection of the rights of citizens of these integration associations by qualified judges of the International court of justice.

Meanwhile, the EU Court of justice has gradually started to appeal to the ECHR's rulings. Initially, the EU Court avoided any reference to the legal positions of the ECHR, stating that the interpretation proposed by the ECHR does not correspond to EU law, or that the legal position of the ECHR on the issue applicable to the case in question is absent. In some cases, the EU Court has persistently maintained a position opposite to that of the ECHR.

For example, the EU Court of Justice refused to extend the principle of inviolability of housing, enshrined in article 8 of the Convention, to commercial premises, ignoring the ruling of the ECHR in the case «Chappelle V. United Kingdom», issued six months before the decision of the EU Court on a similar issue [6], [7].

However, over time, the opposition weakened and gradually references to the ECHR rulings entered the practice of the EU Court, for example, considering complaints related to discrimination against transsexuals and homosexuals; proportionality of punishment; freedom of the press; privacy, etc.

In turn, the ECHR refers to the decisions of the EU Court of Justice with a discount on the special nature of the EU law and order. For example, in *Mustakim V. Belgium* (1991), the ECHR stated that the specifics of the integration process and the establishment of EU citizenship influence the interpretation of the principle of prohibiting discrimination based on nationality [8]. The ECHR also noted that the peculiarities of the pre-trial procedure within the EU should be taken into account when assessing the reasonable duration of the judicial procedure.

In the judgment in *Mathews V. United Kingdom* (1999), the ECHR stated that it must take into account the structural changes enshrined in EU treaties, the nature of the European Community and its special legal order.

Positive practice of respect for each other's legal positions is the basis for successful interaction between the EU Court and the ECHR at the present time. Thus, in the judgment in the case «Dangeville V. France» (2002), the ECHR concluded that by not implementing one of the EU tax Directives into national law, France violated the applicant's property right guaranteed under article 1 of Protocol No. 1 to the Convention. In addition, it should be noted that the courts of the EU and the EEU interact with each other, there is a practice of building a dialogue between the courts, studying each other's practice, and mutual references in judicial acts.

Here can be considered the decision of the Appeals chamber of February 21, 2013. In the case of the application of LLC «FNH», the EurAsEC Court, responding to the question of the right of a legal entity in bankruptcy to initiate legal proceedings, directly referred to the practice of the European Court of Justice, stating: despite the fact that the applicant is in bankruptcy, it has not been liquidated and continues to have the status of a legal entity (business entity), so it does not lose the opportunity to apply to international judicial authorities (the European Court's ruling in the case of Credit and industrial Bank V. Czech Republic, complaint no. 29010/95) [9].

In a decision dated June 24, 2013 in the case of the statement of PJSC "Novokramatorsky machine building plant" the EurAsEC Court applied article 6 of the ECHR, stating: pursuant to the requirements of article 6 of the Convention in addressing the issue, which shall be assessed the contents of the document with the stamp "For official use", the Commission should provide special conditions for the familiarization of stakeholders with this document [10].

Assessing the mentioned approach of the EurAsEC Court to the Convention and the acts of the European Court of Justice, we should agree with the opinion that the Court should not only refer to the Convention, but also explain why it does so, given that not all member States are parties to the Convention [11].

Integration processes in the Eurasian Space emphasize the compatibility of Eurasian and European values in the cultures of the peoples of the CIS and EEU countries. Eurasian integration implies equal cooperation with a coordinated budget, tax and macroeconomic policy, free movement of goods and services, labor, and capital, and a system for protecting citizens rights. One of the important factors for the sustainable development of the Eurasian integration processes is the protection of citizens rights and freedoms in the international and regional judicial systems.

A regional judicial body is already successfully operating in the legal system of the Commonwealth of Independent States:

- Economic Court of the CIS. On January 1, 2015, the court of the Eurasian Economic Union began its activity.

- The court of the EAEU, whose main goal is to ensure uniform application by member States and bodies of the EAEU of the Treaty on the Eurasian Economic Union of May 29, 2014, international agreements of the Union with a third party and decisions of Union bodies, international agreements within the Union.

### **Literature**

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