17 Human Rights, Civil Rights and Eternity Clauses

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17.1 Introduction

In the states where the rule of law guarantees the framework of human rights, their warranties can be traced in several contexts, and they are interconnected. International, regional and national legal frameworks interact with each other.[1]

The role that these respective systems play in human rights protection on their own, however, cannot be overemphasized, because the three levels establish a comprehensive network of protection as a token of the nowadays omnipresent multilevel constitutionalism.

In my paper, first, I examine the international level of human rights protection with the United Nations (UN) framework in the centre, then I move on to the regional level, focusing on the European structures of protection. Afterwards, I analyse the national level, shedding light on some institutions of Hungary, then I provide a short outlook on the means of protection for fundamental rights available in civil matters. Finally, I examine the possibility of the use of the so-called 'eternity clause' in a human rights context, because in my view it could help create a more stable system to safeguard the rule of law.

17.2 International Level

An average European country, e. g., Hungary is a signatory of minimum fifty human rights' treaties nowadays.[2] These frameworks contain many similarities and many differences sometimes resulting in collisions, but their purpose is the same: developing the global human rights' system. One of the first organizations was the League of Nations (1919), but World War II proved that this was a fragile system, and the nations of the world tried to find a better solution to prevent the outbreak of an eventual World War III. This solution

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1 N. Chronowski, 'Alapjogvédelem, nem csak uniós fokon', 1 *Fundamentum* (2009), p. 80.

2 T. Molnár, 'A nemzetközi szervezetek határozatainak beépülése és helye a magyar jogban, különös tekintettel az ENSZ Biztonsági Tanácsának határozataira', LXVI(6) *Jogtudományi Közlöny* (2011), p. 340.

was the creation of the UN, which fulfilled the expectations – according to some – and improved human rights' protection to a previously inconceivable level. The UN was created as an effort aimed at creating better methods of protecting human rights after the outrageous gross human rights violations of World War II. The first important instrument on this path was the adoption of the Universal Declaration of Human Rights (UDHR)[3] in 1948, which marked the beginning of a new era. The most significant effect of the UDHR was that it caused human rights protection to become an international cause.[4] It was followed by many conventions, and some of the most significant instruments became the 'International Bill of Human Rights': UDHR, the International Covenant on Civil and Political Rights (ICCPR),[5] and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[6]

One might think of them as micro-constitutions, the 'restrictional purpose of which is lodged into the national rule of law.'[7] Nevertheless, the magnitude of the UDHR is still one of the greatest, and according to certain opinions it shall be considered as the authentic interpretation of the human rights' provisions of the UN Charter, because the UN Charter does not determine the content of Articles 55-56.[8]

To guarantee the emergence of these principles, the UN established specialized organs and bodies. The most significant of these was the United Nations Commission on Human Rights (UNCHR) from 1946, and during its operation, it was able to 'demonstrate serious results in the fields of norm creation, development and protection for international human rights'; however, the political interests of the nations, in reality, prevented any substantive advancement.[9] That was one of the main reasons for the rejuvenation of the organization *inter alia*: the UN General Assembly admitted in one of its Resolutions that 'Recognizing the work undertaken by the Commission on Human Rights and the need to preserve and build on its achievements and to redress its shortcomings,' are important priorities.[10] There were several concepts about the reorganization, but in the end, as usual, they had to compromise,[11] and the United Nations Human Rights Council (UNHRC) was thus founded in 2006.[12]

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3 The Universal Declaration of Human Rights, 1948.

4 M. Weller, *Emberi jogok és európai integráció*, Emberi Jogok Magyar Központja Közalapítvány (Acta humana studiosorum), Budapest, 2000, p. 34.

5 International Covenant on Civil and Political Rights, 16 December 1966.

6 International Convenant on Economic, Social and Cultural Rights, 16 December, 1966. On this purpose, we have to distinguish the 'Charter-based procedures' and 'treaty-based procedures'. G. Halmai and G.A. Tóth, *Emberi jogok*, Osiris, Budapest, 2003, pp. 139-181.

7 G. Kajtár, 'Fórum', 1 *Fundamentum* (2009), p. 54.

8 G. Kardos, 'A nemzetközi emberi jog diszkrét bája', 4 *Fundamentum* (1998), p. 8.

9 I. Lakatos, 'Az ENSZ Emberi Jogi Tanácsa – vágyak és realitások', 1 *Fundamentum* (2007), p. 87.

10 GA Res. 60/251, 3 April 2006.

11 Lakatos, 2007, pp. 92-93.

12 GA Res. 60/251, 3 April 2006.

The UNHRC has multifarious processes for human rights protection, some inherited from the UNCHR, but in the centre of interest one can find the Universal Periodic Review (UPR), functioning since 2008.[13] This review became one of the greatest innovations of human rights protection because every UN Member State was obliged to accept the fact of monitoring.[14] However, the question remains: can it function in a fashion as it was contemplated? We cannot be able to decide on the answer yet because the process has only been put into practice in the past five years and a solid and well-founded assessment requires more time.

At this point the Social, Humanitarian Cultural Committee (Third Committee) of the UN General Assembly, having jurisdiction over 'a range of social, humanitarian affairs and human rights issues that affect people all over the world', shall also be mentioned. Every Member State of the UN is represented in this committee; that is why the UNHRC has fewer members.[15]

The UN Security Council (UNSC) can also be linked to human rights protection, because it can take measures, e.g. adopt a list of the (financial) supporters of terrorism and freeze their assets. This causes a collision between the international and the regional level, because the decisions of the UNSC bind the Member States, albeit these resolutions do not have legal remedies, not even the International Court of Justice has undisputedly jurisdiction to examine the legality of these decisions.[16] That was the reason why the Court of Justice of the European Union (CJEU) also had to take a stand in this matter – navigating among relevant procedural rules – and choose between these two options in observing the above international obligations.[17] Notably, the CJEU did so in the landmark *Kadi* and *Yusuf* cases in the context of the war on terror.[18]

Another path of human rights protection is linked to the Office of High Commissioner for Human Rights (OHCHR), which organizes several activities in the Member States such as monitoring and provision of technical assistance.[19] Under the aegis of the UN one can find several committees protecting human rights by monitoring implementation of some human rights treaties (treaty-bodies), e.g.: the Committee against Torture, the Committee

13 V. Haász and M. Szappanyos, 'Az ENSZ tagállamok emberi jogi helyzetét értélekő egyetemes időszakos felülvizsgálat (UPR)', IV(1) *Föld-rész* (2011), p. 71.

14 Haász and Szappanyos, 2011, p. 73.

15 Lakatos, 2007, p. 89.

16 T. Lattmann, 'Fórum', 1 *Fundamentum* (2009), p. 50.

17 Other question is the choice between the rule of law and the effective fight against terrorism. *See*: A. Jakab, 'Breaching Constitutional Law on Moral Grounds in the Fight against Terrorism? Implied Presuppositions and Proposed Solutions in the Discourse on "the Rule of Law vs. Terrorism"', 9(1) *International Journal of Constitutional Law* (2011), pp. 65-68.

18 Judgment of the Court (Grand Chamber) of 3 September 2008. Joined Cases C-402/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, 2005.

19 OHCHR in the World: making human rights a reality on the ground.

on the Elimination and Discrimination against Women, the Committee on the Rights of a Child, the Committee on Forced Disappearances.

Of course, the International Court of Justice also considered the issues of human rights protection, and it '[…] has had an important involvement in the development of a modern law of international human rights […].'[20]

The system of the UN on human rights protection is very diverse; nevertheless, the equal implementation of the different elements could cause difficulties on the international level of human rights protection, because it is very substantial, but very sensitive in the same time: international interests are always affected by the national ones. No country can exercise public power without due respect for human rights, not even the ones with questionable (illiberal) practices in this respect, but until there are countries which prioritise their own interests instead of protecting human rights, no one will find a perfect solution on the international level.

If we accept the theory of some scholars that the UN Charter is 'the constitution of the international community',[21] being just the beginning of a process, we should then take into account the possibility of a 'world nation'. Nonetheless, some signs indicate other options, even though the prevalence of the human rights must be a central question.

17.3 Regional Level

After the international (universal) level, we have to take into consideration the regional ones, e.g.: the European Convention on Human Rights, the American Convention on Human Rights, the African Charter on Human and Peoples' Rights, the Arab Charter on Human Rights.[22] In order to evade wandering from the main topic, I only concentrate on the European frameworks, just mentioning the other regions.

According to the variance between the cultures and legal systems of the world, it is far more difficult to reach a common standpoint on the regional level than on the international one, because, for instance, several states in Africa have different views of the role of religion, and while everyone could agree to the UN Charter adopting more detailed regulation could create more serious disputes resulting in radical conflicts. Some of the African, Asian and Arabic countries – with different rights protection systems of their own – have different cultures and different attitudes: they lean on collectivism and irrationalism.[23] The vision

20 S.M. Schwebel, 'The Treatment of Human Rights and of Aliens in the International Court of Justice', in V. Lowe and M. Fitzmaurice (Eds.) *Fifty Years of the International Court of Justice: Essays in Honour of Sir Robert Jennings*, digitally printed version, Cambridge University Press, Cambridge, 2008, p. 329.

21 G. Sulyok, 'Interjú Bragyova Andrással', 1 *Fundamentum* (2009), p. 45.

22 American Convention on Human Rights, Pact of San Jose, Costa Rica. African Charter on Human and Peoples' Rights, 27 June 1981, Nairobi, Kenya. Arab Charter on Human Rights, 22 May 2004.

23 Weller, 2000, p. 41.

of the European way of human rights protection is extraneous to some of them, because they have other focal points,[24] and they often refer to the statement that human rights are the products of the 'Western civilizations'.[25] One of the extreme criticisms of the framework of the international human rights is connected to the Muslim Brotherhood because according to their founder, Hassan al-Banna, the freedom of the people does not depend on the individuals' rights and on democracy but rather on a world of 'believers'.[26] In my view, this highlights the significance of the UDHR, because its standards are binding on all UN Member States as customary law. Another focal point in this regard is the wide range of possibilities open to the signatories to implement rights protection frameworks. Until one can find countries, where the rule of law is disregarded to give space to the 'rule of war', then the establishment of well-functioning human rights protection schemes will always be a secondary consideration.[27]

The collision of universality and cultural relativism (in terms of indigenous perceptions of justice and constitutionalism, or even rule of law) could create contradictions during the implementation of an international or regional norm in the legal system of a country; nevertheless, it could be solved in some ways with the uniform practice of the constitutional courts, which brings up the question of the use of comparative law in the process of constitutional interpretation.[28] However, another perspective of the matter is relevant to the difficulty of this above-mentioned process, because some states have diverse cultural customs, which – if examined in the context of litigious behaviour – paints an interesting picture in terms of the different attitudes of societies.[29]

Secondly, I would like to examine the human rights protection system of the Council of Europe, subsequently the same within the European Union, merely extending to observations on the protection offered by the different conventions and by the courts established by them.[30] The Council of Europe has already expressed priorities in the European Convention for the Protection of Human Rights and Fundamental Freedoms

24 The number of states which return to the use of sh'aria is growing exponentially. *Cf.* A. Badó, *Az igazságszolgáltató hatalom függetlensége és a tisztességes eljárás*, Iurisperitus Bt., Szeged, 2013, p. 35.

25 Weller, 2000, p. 34.

26 Official English Website of the Muslim Brotherhood: www.ikhwanweb.com/article.php?id=17065 (22 February 2014). NB: 'believer' means a devout follower of the Muslim religion.

27 M. Sulyok, '"In All Fairness…": A Comparative Analysis of the Past, Present and Future of Fair Trial Systems Outside of Europe', in A. Badó (Ed.), *Fair Trial and Judicial Independence – Hungarian Perspectives,* Springer, Berlin, Heidelberg, New York, 2013, p. 117.

28 G. Halmai, *Alkotmányjog – Emberi jogok – Globalizáció – Az alkotmányos eszmék migrációja,* L'Harmattan, Budapest, 2013, pp. 124-137.

29 For instance, avoiding a trial is deeply rooted and well respected social convention in Japan and it brings shame to the family if one ends up in court clearing up a legal dispute. *See* K. Chin and C.M. Lawson, 'A kifinomult szellem joga: a jog hagyományos japán megközelítése', in Varga Csaba (Ed.), *Összehasonlító jogi kultúrák*, Osiris, Budapest, 2000, pp. 211-231.

30 Other options like the European Committee for the Prevention of Torture or the European Ombudsman could not reach place in my analysis.

(ECHR), as it sets forth that in order to achieve '[…] greater unity between its members […] the governments of European countries […] take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration.'[31]

These priorities defined the course of action leading to the current status of the European Court of Human Rights (ECtHR), in front of which countries and individuals can seek legal protection for fundamental human rights provided to them under the ECHR.[32] Neither the scope *ratione personae* of those entitled to seek remedies in front of the ECtHR, nor the catalogue of the rights protected are very specific, but according to some authors 'the real strength of the ECHR lies in the effectiveness of its enforcement mechanism',[33] although the judgments are not enforceable,[34] only through political means.[35]

Nevertheless, there is no fire without smoke, the process established has its own difficulties and provides paths for possible solutions. For instance, the fact that the Court is overburdened with applications, required reforms and thus the pilot judgment procedure[36] was put into place '[…] as a means of dealing with large groups of identical cases that derive from the same underlying problem.'[37] The first case resolved by way of a pilot judgment was *Broniowski v. Poland*,[38] followed by several e.g. the *Dogan and Others v. Turkey* case.[39] The procedure of pilot judgement established the possibility of simplifying and expediting the evaluation of the cases. Another matter to consider is the similarity of several cases from one country, which suggests systemic flaws in the domestic constitutional order. As such, these indicators can also refer to the weak or faulty implementation of the first decision brought against the respondent state, because had the country implemented the decision of the Court properly, there would not have been further cases related to the flaw under domestic law leaving room for the original and every subsequent infringement.

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31 European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950.

32 A. Blahó and Á. Prandler, *Nemzetközi szervezetek és intézmények*, 3rd revised, extended edn, Aula, Budapest, 2011. p. 383; *cf.* P. van Dijk and G.J.H. van Hoof, *Theory and practice of the European Convention on Human Rights*, 3rd edn, Kluwer Law International, Hague, 1998, p. 40.

33 A. Aust, *Handbook of International Law*, Cambridge University Press, Cambridge, 2007, p. 237.

34 D.J. Harris et al. (Eds.), *Law of the European convention on human rights*, Butterworths, London, Dublin, Edinburgh, 1995, p. 26.

35 NB: 'The Committee of Ministers may fully exercise its influence to persuade the state concerned to comply with the Court's judgments, not least by noting its failure to comply with the Convention and taking appropriate action. In practice, the Committee of Ministers very seldom needs to exert political and diplomatic pressure but functions rather as a forum for constructive dialogue, thus helping states find satisfactory solutions enabling them to execute the Court's judgments.' V. Miller, *The European Convention on Human Rights and the Court of Human Rights: Issues and Reforms*, Library of the House of Commons, UK, Standard Note.

36 A. Buyse, 'The Pilot Judgment Procedure at the European Court of Human Rights: Possibilities and Challenges', 57 *Nomiko Vima* (*The Greek Law Journal*) (2009), pp. 1890-1902.

37 The Pilot-Judgment Procedure, www.echr.coe.int/Documents/Pilot_judgment_procedure_ENG.pdf (22 February 2014).

38 *Broniowski v. Poland* ECHR [GC] (2004) No. 31443/96.

39 *Dogan and others v. Turkey* ECHR (2004) Nos. 8803-8811/02, 8813/02 and 8815-8819/02.

As an example, in Hungary the requirement of the prohibition of undue delay[40] causes significant problems and results in a host of cases decided against Hungary.[41]

The first sentence in the preamble of the ECHR contains a reference to the Universal Declaration of Human Rights, which establishes a link between these two, simultaneously emphasising that the UDHR has an important (*quasi superior*) role in the European human rights protection from the beginning. The UN attitude is reflected in the European treaties and institutions, and these organizations could reach a very high level of protection for human rights, because the common European traditions[42] provide grounds for this possibility. On the other side, the connection between the ECHR and the constitutional courts is significant.[43]

Another important institution established by the Council of Europe is the European Commission for Democracy through Law (Venice Commission), which is the independent advisory body of the Council of Europe in constitutional matters.[44] Even though the Venice Commission's role is consultative, the Member States are observant of the opinions issued based on an incentive to preserve and develop to the common constitutional heritage.

The law of the European Union (EU) is pervaded by international standards of human rights protection and the practice of the ECtHR. Over the decades, the EU has created a complex system of human rights protection – independent thus far of the framework created under the umbrella of the Council of Europe; however, this integration started out on economic foundations in the first place, and the protection of human rights became relevant along the way,[45] a complete overview of which could easily take up all the space at my disposal now. Therefore, I just mention Article 67 of the Treaty on the EU (TEU), which

40 *See* J. Bóka, 'To Delay Justice, Is Injustice – Az ésszerű idő követelményének összehasonlító vizsgálata', in A. Badó (Ed.), *A bírói függetlenség, a tisztességes eljárás és a politika – Összehasonlító jogi tanulmányok*, Gondolat Kiadó, Budapest, 2011, pp. 134-155.

41 As the statistics of the ECHR show, the total number of judgements against Hungary is 313 from 1959 to 2013. From this amount, the ones related to the length of the judicial proceedings is 223, www.echr.coe.int/Documents/Stats_violation_1959_2013_ENG.pdf (22 February 2014); F. Kondorosi et al. 'A bírói etika és a tisztességes eljárás', in K. Legény (Ed.), *Magyar Hivatalos Közlöny*kiadó, Budapest, 2007, pp. 102-109.

42 The common constitutional heritage of the Member States, established by the CJEU.

43 J.E. Pérez-Rodríguez, *The Dynamic Effect of the Case-Law of the European Court of Human Rights and the Role of Constitutional Courts, in Dialogue between Judges*, ECHR, Strasbourg, 2007, pp. 57-66.

44 www.venice.coe.int/WebForms/pages/?p=01_Presentation (22 February 2014).

45 G. de Búrca, 'The Evolution of EU Human Rights', in P. Craig and G. de Búrca (Eds.), *The Evolution of EU Law,* Oxford University Press, Oxford, 1999, pp. 465-497; A. Raisz, 'Az Európai Unió hatása az Európa Tanács emberi jogvédelmi rendszerére', *Publicationes Universitatis Miskolcinensis. Sectio Juridica et Politica*, Tomus. XXIV, 2006, pp. 315-318; N. Chronowski, Protection of Fundamental Rights in the European Union (Tendencies and Actual Problems), in N. Chronowski (Ed.), *'Adamante notare': Essays in Honour of Professor Antal Ádám on the Occasion of his 75th Birthday*, Pécsi Tudományegyetem ÁJK, Pécs, 2005, pp. 452-456; (Chronowski, 2005 I); S. Szemesi, 'Az Európai Unió és a közösségi jog szerepe az Emberi Jogok Európai Bírósága gyakorlatában', 17(2) *Acta Humana* (2006), pp. 52-56; G. Sulyok, 'Az emberi jogok nemzetközi jogi és európai uniós védelmének összehasonlítása', 16(2) *Acta Humana* (2006), pp. 30-56; L. Blutman, *Az Európai Unió joga a gyakorlatban*,. 2nd revised edn, HVG-Orac, Budapest, 2013. pp. 477-494.

creates legal certainty within the Union in terms of the 'respect for fundamental rights and the different legal systems and traditions of the Member States' due to the fact that it imposes relevant obligations on the Member States.[46]

Since December 2009, the Charter of Fundamental Rights of the European Union (ECFR)[47] defines the framework and the substratum of these principles is connected to the 'International Bill of Rights'.

At first, the CJEU had not functioned as a human rights protection judicial forum, but progressively extended the scope of the decisions through economic matters[48]; moreover, the rule of law of the EU has developed in its jurisprudence by acknowledging the general constitutional principles as part of a European integration process.[49]

If we examine the two practices of protection, we can find several signs of convergence.[50]

The Council of Europe has already enunciated its commitment creating a more unified Europe in 1949: '[…] there is a need of a closer unity between all like-minded countries of Europe'; '[they shall] create an organization which will bring European States into closer association'.[51] The Preamble of the Charter of Fundamental Rights of the EU sets forth the same intention, as 'creating an ever closer union among them'; moreover, the Preamble reaffirms *inter alia* the rights protected by

> […] the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights[52]

Thereby a link is created between the two regional human rights protection systems, which continues to evolve as we speak.[53] What is more, according to the Charter, in the EU context, in the application of EU law, the *de minimis* protection of human rights shall be assessed under EU law (i.e. the ECFR), except in cases where the ECHR might set forth higher

46 Consolidated Version of the Treaty on European Union.

47 Charter of Fundamental Rights of the European Union (2000/C 364/01).

48 A. Grád. & M. Weller, *A strasbourgi emberi jogi bíráskodás kézikönyve*, 4th, extended edn, HVG, Budapest, 2011, p. 770.

49 N. Chronowski, *'Integrálódó' alkotmányjog*, 1st edn, Dialóg Campus, (Institutiones juris/Janus Pannonius Tudományegyetem (Pécs), Budapest; Pécs, 2005, p. 55. (Chronowski, 2005 II).

50 N. Chronowski, 'Az alapjogvédelem globális, európai és hazai trendjei', in T. Drinóczi and A. Jakab (Eds.), *Alkotmányozás Magyarországon 2010-2011 I*, Pázmány Press, Budapest, Pécs, 2013, pp. 154-159.

51 Statute of the Council of Europe, London, 5.V.1949.

52 Charter of Fundamental Rights of the European Union (2000/C 364/01).

53 E. Szalayné Sándor, 'Új távlatok az európai alapjogvédelemben – Hatályba lépett az Egyezmény 14. Kiegészítő Jegyzőkönyve', 3 *Közjogi szemle* (2010), pp. 33-40.

standards in terms of the rights subject to assessment (Article 52 creates the link between the ECFR and the ECHR).[54]

The other aspect of the question is enshrined in the Treaty of Lisbon,[55] which contains a proclamation in Article 62 that the EU shall accede[56] to the European Convention for the Protection of Human Rights; however, the academic public opinion remains divided on this issue.[57] This aim[58] is a praiseworthy one, but in practice it proposes several hindrances (different legal systems can generate collisions during the practice). In the meantime, we can determine that the human rights practice of the Member States and the European Court of Human Rights 'inspired' the Court of Justice of the European Union.[59] For instance, the Court has taken into consideration the treaties binding the Member States concerning human rights.[60] In addition, one can find another interaction from the other way around, because the CJEU also affected the ECtHR.[61]

The connection between these two organizations presumably will improve, but the rapidity of this progress is leastwise questionable. Nevertheless, both the ECHR and the EU Charter are clear signs of a new and unifying human rights protection system in Europe.

17.4 National Level

Subsequently, I examine the principles of the national human rights protection in Europe presenting it by delineating the protective framework of Hungary, because the legal values which are posited in international and supranational documents appear in national constitutions.[62] The effects of international law, particularly the UDHR, influenced the constitutions of the European countries after the World War II (France, 1946, Italy, 1947), and

54 Charter of Fundamental Rights of the European Union (2000/C 364/01).

55 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 13 Decembre 2007.

56 D. Chalmers et al. (Eds.), *European Union Law: Cases and Materials*, 2nd. edn, Cambridge University Press, Cambridge, 2011, pp. 259-262.

57 In the Hungarian legal literatuere, *see* E. Szalayné Sándor, 2010, pp. 33-40; E. Szalayné Sándor, 'Alapjogok (európai) válaszúton – Lisszabon után', LXVIII(1) *Jogtudományi Közlöny* (2013), pp. 22-24; Gy. Marinkás, 'Az emberi jogok védelmének fejlődése az Európai Unióban: az Unió csatlakozása az Emberi Jogok Európai Egyezményéhez', VIII(1) *Miskolci Jogi Szemle* (2013), pp. 97-120.

58 A. Osztovits (Ed.), *EU-jog*, HVG-ORAC, Budapest, 2012, pp. 252-254.

59 Grád andWeller, 2001, pp. 108-111.

60 Chronowski, 2005 II, p. 57.

61 Raisz, 2006, pp. 318-326.

62 Chronowski, 2009, p. 82.

the effects of the international and regional levels have to be taken into consideration to this date[63]; however, through certain 'constitutional' filters.[64]

Democratic countries must act in conformity with these legal provisions if they intend to participate in the EU. The constitution of an EU Member State generally contains the most important human rights, with exceptions of course, e.g. in the Czech Republic the Charter of Fundamental Rights and Basic Freedoms is independent of the constitution, albeit considered a part thereof.[65] These catalogues sometimes are (i) very circumstantial, like in the Constitution of the Portuguese Republic, where the fundamental rights and duties are regulated in 77 Articles[66]; (ii) sometimes reticent, like in the Danish Constitutional Act, where the citizens' rights consist of fourteen sections[67]; but all of these set forth the creation of a comprehensive and complete human rights protection framework. We have to dissert on the principle of complementarity at this point, which pronounces the statement that the protection of these fundamental rights is the duty of the state, but if it is not capable or otherwise unwilling or indisposed to take measures when they are required, then the international community can intervene.[68] The development of national legal systems could give a significant impulse to the progression of the international law, and could help unification.[69]

Our Fundamental Law prescribes rules in the National Avowal and in the Freedom and Responsibility and obliges constitutional organs like the Constitutional Court (Article 24), the Commissioner for Fundamental Rights (Article 30) or the Courts (Article 25) to guarantee proper protection.[70] Every state organ must protect fundamental rights during their operation, as Article I sets forth: 'The inviolable and inalienable fundamental rights of MAN shall be respected. It is the primary obligation of the State to protect these rights', because it is the said to be the prime commitment of the Hungarian state, nothing, not even the efficiency of the state operations can be more emphatic, in accordance with the pertinent constitutional provisions.[71]

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63 T. Molnár, *A nemzetközi jogi eredetű normák beépülése a magyar jogrendszerbe*, Dialóg Campus; Budapest: Dóm K., Budapest; Pécs, 2013, pp. 221-227.

64 I. Vörös, *Csoportkép Laokoónnal: a magyar jog és az alkotmánybíráskodás vívódása az európai joggal*, MTA Társadalomtudományi Kutatóközpont Jogtudományi Intézete, Budapest, 2012, pp. 104-110; Molnár, 2013, pp. 81-100.

65 Charter of Fundamental Rights and Basic Freedoms, Presidium of the Czech National Council, 16 December 1992.

66 Constitution of the Portuguese Republic.

67 The Constitutional Act of Denmark.

68 Chronowski, 2009, p. 85.

69 F. Kondorosi, *A világ végveszélyben?: a nemzetközi jog új kérdései*, 1st edn, Magyar Közlöny Lap – és Könyvkiadó, Budapest, 2008, p. 50.

70 The Fundamental Law of Hungary.

71 F. Gárdos-Orosz 8. § [Alapjogok korlátozása], in A. Jakab (Ed.), *Az Alkotmány Kommentárja I*, 1st edn, Századvég Kiadó, Budapest, 2009, p. 441.

The cardinal laws enacted for the implementation of the Fundamental Law upheld the structures for the protection of human rights established under the Constitution of 1989, such as e.g. the Equal Treatment Authority, the Independent Police Complaints Board, the Hungarian Authority for Consumer Protection and the Hungarian Labour Inspectorate, but the ones which are explicitly mentioned in the Fundamental Law – Constitutional Court, Commissioner for Fundamental Rights and the Hungarian National Authority for Data Protection and Freedom of Information – are the most relevant in the present constitutional context. The correspondence between the national and international level can be traced e.g. in the practice of the Constitutional Court through several cases.[72] The Hungarian Constitutional Court observed the ECHR since the beginning of its functioning, e.g. it was even used in a decision one week before Hungary actually ratified it.[73] There are laws, restrictions and limitations for sovereignty in the national law, but the Fundamental Law stipulates the requirement of conformity of national law with international law under the Article Q).[74] To ensure the proper functioning of the rights protection system, we can find several sectoral laws and other legal rules in Hungary, such as Act CLI of 2011 on the Constitutional Court, Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities, Act CXI of 2011 on the Commissioner for Fundamental Rights and Act CXII of 2011 on Informational Self-Determination and Freedom of Information.

If one looks for the main difference between international and national legal norms, one of the possible answers is the difference in the scope of protection. Citizens' 'civil rights' shall also be considered in this topic, not just because they are partly synonymous to human or fundamental rights, but also due to the fact that citizens' civil rights are a set of rights that might be different from that of human rights. While the international conventions like the UDHR extend to 'all members of the human family',[75] some of the national laws extend some of the protections only to their citizens, e.g.: Article XI. Right to education, Article XIV. Expulsion, Article XIX. Social security, Article XXIII. Right to vote (under the Fundamental Law of Hungary). In addition, 'second generation rights' (social, cultural and economic rights) are mostly dependent on the economic capacity of a country; therefore, it can happen that the catalogues of these rights are not always the same in all the states. Also, as the example of consular protection demonstrates, it might occur that the protections afforded by two states to their respective citizens in terms of civil rights collide as part of an international conflict.[76]

72 A. Szalai, 'Az Emberi jogok Európai Bírósága ítélkezésének megjelenése a magyar alkotmánybíróság gyakorlatában', VII(4) *Kül-Világ* (2010), pp. 15-21.

73 Szalai, 2010, p. 15.

74 The Fundamental Law of Hungary.

75 The Universal Declaration of Human Rights, 1948.

76 I. Schiffner, *A diplomáciai védelem a nemzetközi jogban* – doktori értekezés, 2010, p. 25.

17.4.1 *Layers of the National Level – The Role of Civil Society in Protecting Fundamental Rights*

On the national level, civil society plays a very significant role in the human rights protection. An immense amount of advocacy associations, organizations, and groups struggles for better standards in protecting and enforcing human rights. These battles take place on the international, national and also on a sub-national level as well, e.g. just some of the greatest organizations: Amnesty International, Human Rights Watch, and Greenpeace (or the the Hungarian Civil Liberties Union, the Hungarian Helsinki Committee in the Hungarian context).

In my paper, I examine only one minor aspect of this question, the one that is relevant to universal protection for human rights. I have already described and presented the official protective instruments of the UN, but we cannot avoid a few words to be said about the role of CSOs and NGOs. E.g., they can participate in the negotiations of the UN Economic and Social Council and the UPR process to share their opinions about the human rights state of the country.[77] The Council of Europe and the EU have NGOs with a significant role in the decision-making.[78]

Another way to shape public opinion is the National Human Rights Institution (NHRI), which is an independent rights protection organization. This can maintain effective human rights protection and monitoring continuously. When an organization proves that it could reach the strict criteria, it will become part of a world-wide system.[79] This institution is national, but non-governmental, which connects the two spheres as a separate participant.[80] NHRIs have three categories: A, B and C according to the quality of the protection. Hungary was classified as C until 2011, when our national ombudsman was reclassified into the B category. This is a real appreciation for Hungarian protection since organizations in class B can not only observe the processes, like those in class C,[81] but can meaningfully contribute to the real tasks.[82] In my view, this opportunity is an intriguing mixture of the national and international rights protection, when a national member entity reaches the international scale, making possible a better connection between the two, and helping to widen the national vision.

77 Blahó and Prandler, 2011, p. 466; *Cf.* contributions and participation of 'other stakeholders' in the UPR (Information updated on 12 December 2013).
78 Blahó and Prandler, 2011, pp. 466-468.
79 J. Sziklay, 'Az ombudsman nemzeti emberi jogi intézményi (NHRI) státusa', *Nemzet és biztonság* (2011, December), p. 88.
80 Haász and Szappanyos, 2011, p. 80.
81 Blahó and Prandler, 2011, p. 466.
82 Sziklay, 2011, pp. 89-90.

17.4.2 Special Ways to Protect Human Rights: Constitutional Eternity Clauses

Last, but not least, I analyse whether it is possible that in a way certain principles enshrined in the universal protection of human rights (rooted to some extent in natural law) affect the scope of human rights protection in national constitutions through the application of the so-called 'eternity clauses'. According to this argument, eternity clauses can serve as adequate safeguards for human rights, not just nationally, but also universally. If we accept the principles of international law, e.g. state sovereignty, non-use of force and self-determination,[83] which bind the signatories since decades as 'eternity clauses' (although not codified as such), we could also accept their outstanding significance, because the stability of international law is substantial and essential in the scope of human rights protection. Such protection is facilitated by these core principles, and they could be further supported with a spreading use of eternity clauses.

Applying eternity clauses is an established way to avoid dictatorship and simultaneously fortifying protections for fundamental rights, like in Germany after the end of World War II. In my view, that is the reason why the *Grundgesetz* of Germany contains a similar reservation under Article 79(3). The drafters of the *Grundgesetz* opined that after the horrendous occurrences of the War that the people's equality shall be protected, and one way to ensure this was the eternity clause. The *Grundgesetz* contains several of these, e.g. with respect to human dignity, state authority, right to resist against abolishing constitutional order and 'Germany is a democratic and social federal state.'[84] The German constitution only limits constitutional revision; nevertheless, if a new constitution would be adopted to change the levels of the protection 'set in stone', it could be possible. The German Constitutional Court dealt with this matter several times.[85]

Even so, the eternity clause could help engrain the most important human rights not just as a token of the political power of the presently ruling elite, but also for the benefit of future generations, who will perceive the deeds of their ancestors as a heritage worthy to be upheld; one that is destined to eternity.

Another possible application of eternity clauses is relevant to international law: it would be possible to declare that certain rights included in the UDHR (or other international instruments) cannot be subject to limitations or restrictions and cannot be suspended (as a matter of natural law) within the national legal order. This is due to the fact that the Preamble of the UDHR assigns inalienable rights 'to the citizens of the world'.[86]

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83 K. Nagy, *Nemzetközi jog*, 1st edn, Püski Kiadó, Budapest, 1999, pp. 61-96.

84 Deutscher Bundestag, Basic Law for the Federal Republic of Germany, printed in October 2010.

85 H. Küpper, 'Az alkotmánymódosítás alkotmánybírósági kontrollja Magyarországon és Németországban', LIX(9) *Jogtudományi Közlöny*, pp. 269-273.

86 Kardos, 1998, p. 5.

One supporting theory of the above is the argument of the core constitution (*Kernverfassung*). It argues that a foundational part of the constitution represents the core of national constitutional identity of a nation, with the nation in question having complete control thereover.[87] The use of this principle roots to the intention of some Member States of the EU to protect their sovereignty (constitutional identity) pertinent to the core constitution from interference by the EU. This effort may be duly reinforced by the institution of eternity clauses, because both this theory and that of the core constitution aim to protect the most important parts of the constitution. Therefore, the question we have to ask ourselves is: what could be the catalogue of rights to be included in these eternity clauses?

The eternity clauses function as standards setting the bar for constitutional regulation in general,[88] thus the fact that they can only be changed by adopting a new constitution, attribute them a higher added value in human rights protection. If a parliament – or constitutional legislator – is bound by eternity clauses, change can also be effected in case a new constitution is agreed upon and adopted. Nevertheless, if these clauses appeared in international law (accepted as a generally acknowledged principle of international law), constitutional human rights protection could only be eroded in case international law changed; however, such change is almost impossible, and reaching consensus would amount to differences between states. Therefore, if we accept the theoretical possibility of international eternity clauses, a possible solution to change their scope would only be possible in changing their interpretation, as is done in those countries that have adopted eternity clauses to uphold protections for human rights.[89]

If we take into consideration that the obligatory rules of international law took a long time to actually become obligatory, then it is a possible approach for their further development for them to apply on the national level as protection encoded in eternity clauses. Natural law does not depend on time or place, but on 'the common wants and ideals that we find in man.'[90]

Last but not least, the institutional implications of such international eternity clauses shall be considered. Normally, in the national context, the interpretation of the meaning of eternity clauses falls under the exclusive jurisdiction of constitutional courts,[91] analogously, the establishment of an international organization should be considered, tasked with the interpretation of said international eternity clauses, obviously also relying on the 'judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law', which are among the

87 A. Zs. Varga, 'A mag-alkotmány védelmében', *Pázmány Law Working Papers,* No. 2, 2011.
88 J. Fröhlich, 'Az örökkévalósági klauzulák dilemmája', in T. Drinóczi and A. Jakab (Eds.), *Alkotmányozás Magyarországon 2010-2011 II,* Pázmány Press, Budapest-Pécs, 2013, p. 32.
89 Halmai, 2013, pp. 29-47.
90 O.W. Holmes, 'Natural Law', *The Harvard Law Review* (1918).
91 Küpper, 2004, p. 274.

subsidiary means to determine the rules of law.[92] Such developments entail that pluralism and consensus will define the future of the international community in the context of protecting human rights under eternity clauses recognized and solidified in international law (Obviously, this is a reflection of the national practice, where pluralism and the search for consensus steer decision-making towards the application and respect of constitutional eternity clauses).[93] Summing it up, naturally, in every rule-of-law democracy, there are principles, irrespective of whether these are recognized as part of an eternity clause or not, that cannot be departed from or derogated.[94] These principles surrounding the core constitution might serve as a basis for determining fundamental values to be included in eternity clauses on the international level as well.

17.5 Conclusion

In my paper, I examined the international, regional, and national levels of human rights protection, with additional observations on the role of civil society and the constitutional legislator in creating additional protection for human rights. The questions examined in this paper corresponded to the specificities of human rights protection of the respective levels. Even these levels collide sometimes, albeit their aim might be the same: protecting human rights on the highest possible level.

If human rights are protected by constitutions, constitutional acts, regional and international treaties, supranational decisions and norms as part of a multidimensional framework of different norms, will then their emergence be multidimensional, too?[95] The theory of eternity clauses could help this improvement.

There are many other options and possibilities which can be found on the levels examined, but their purpose is the same: to reach

> […] the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.[96]

92 Statute of the International Court of Justice.

93 N. Chronowski et al., 'Túl az alkotmányon… – Az alkotmányvédelem elméleti és európai kontextusa, továbbá magyar gyakorlata 2010-ben, avagy felülvizsgálható-e az alkotmánymódosító törvény az Alkotmánybíróság által', 4 *Közjogi Szemle* (2010), p. 7.

94 N. Chronowski et al., 2010, p. 9.

95 Chronowski, 2009, pp. 86-87.

96 The Universal Declaration of Human Rights, 1948.