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Extraterritorial Case Law of the Court of Justice of the European Union in the Light of Modern Approaches

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Summary: The European Union actively practices the implementation of extraterritorial jurisdiction, which is due to the need to ensure the proper functioning of the internal market and the legal order of the EU, compliance with its founding treaties. With this in mind, the article aims to define and analyse the extraterritorial case law of the Court of Justice of the European Union (CJEU) through the prism of different jurisdictional models. Regulatory provisions, modern case law, and doctrinal views on the discussed problem were considered, in particular, legal means of resolving jurisdictional conflicts in the EU were analysed in detail, the evolution of the practice of applying jurisdictional models by the CJEU was discussed, attention was focused on the territorial expansion of the EU law. The article also discloses the issue of non-recognition of such extraterritorial effect of legal norms on the part of third countries, as well as measures to prevent and resolve disputes arising on this ground.

Keywords: European Union, EU law, Court of Justice of the European Union, extraterritorial application of the EU law, extraterritoriality of human rights, EU internal market, free movement of capital.

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1. Introduction

The concept of extraterritorial application of European Union's law is being developed by the case law of the Court of Justice of the European Union (hereinafter referred to as CJEU), unlike the US, where it is preferred to explicitly enshrine the extraterritorial effect of national law in congressional decisions. The legal position of the CJEU is that the EU (hereinafter referred to as EU), having international legal personality, has the right to set the limits of application of EU law at its own discretion, limited only by the existing direct prohibitions of international law.[1] The legal basis for the extraterritorial effect of EU law in the internal legal orders of third countries is the provisions of the founding treaties, the Charter of Fundamental Rights of the European Union (hereinafter referred to as the EU Charter) and secondary EU law, primarily in the areas of competition, investment, foreign trade, financial services, environmental protection, and personal data protection. CJEU's case law has a significant impact on the definition of the areas in which extraterritorial measures with legal consequences are carried out.[2] The Court is gradually extending its extraterritorial effect to other areas of legal regulation under the EU's competence to ensure the proper functioning of the EU's internal market and legal order, primarily the effective implementation of the provisions of the founding treaties, the EU Charter and EU legislation. At the same time, third countries may not recognise the extraterritorial effect of EU law, which leads to disputes. For example, in the *Boukhalfa case* (Case 214/94, *Ingrid Boukhalfa v. Bundesrepublik Deutschland),* the CJEU explicitly stated that, as a general rule, the EU founding treaties and secondary law are valid on the territory of Member States, but the possibility of the EU law being valid outside its territory is not excluded.[3]

2. Legal Means of Resolving Jurisdictional Conflicts in the EU

In order to prevent and minimise disputes, the EU, its Member States and third countries, *inter alia*, resort to legal means of resolving jurisdictional conflicts

1 FALALIEIEVA, L. Modern Approaches to the Extraterritorial Application of the EU Law. *European Studies – The Review of European Law, Economics and Politics*. 2014, vol. 1. p. 104.

2 See: MURAVIOV, V. I. Pravovi zasady rehuliuvannia ekonomichnykh vidnosyn Yevropeiskoho Soiuzu z tretimy krainamy (teoriia i praktyka): monohr. Kyiv: Akadem-Pres, 2002, S. 261–265 (in Ukrainian).

3 Case 214/94 Ingrid Boukhalfa v. Bundesrepublik Deutschland (Judgment **of** the ECJ of 30 April 1996), [1996] ECR I-02253. [online] Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61994J0214:EN:HTML

on the above issues, in particular by concluding international cooperation agreements, mutual notification of possible investigations by the parties in the relevant areas, consultations, etc., given the need to harmonise legal regulation and its application. At the same time, it is important to: comply with the universally recognised basic principles and norms of international law, primarily the *jus cogens* norms of general international law, *erga omnes* obligations, as well as the principles and values of the EU; take into account the evolution of the human rights protection system in the EU and the internal market of the integration association, the role of institutions, primarily the European Commission and the CJEU, in the development of jurisdictional practice, approaches to the jurisdictional models of extraterritorial application of EU law in the context of the enlargement of the EU.

When establishing the fact of the European Commission's extraterritorial jurisdiction as a jurisdictional model, the single economic entity doctrine[4] was used as a jurisdictional standard for a relatively short time, which was replaced in the case law by the implementation doctrine[5], and now the effects doctrine is gradually being established in the CJEU case law[6]. Therefore, the search for the most optimal, most justified, utilitarian and effective model/test for the exercise of the EU's extraterritorial jurisdiction, which would be the least critical from the standpoint of international law, is still ongoing. In the judgment in the case of *Intel Corporation Inc. v. European Commission* of 12 June 2014. the General Court noted the fact of "parallel existence" of two tests on the basis of which the existence of the necessary jurisdiction of the European Commission under public international law may be established: implementation doctrine and effects doctrine (§ 244),[7] which indicates a fundamental modification of the jurisdictional standard for the extraterritorial application of EU law. It is noteworthy that in the judgment in *Intel Corporation Inc. v. European Commission* of 6 September 2017, the CJEU on appeal, although it cancelled the contested judgment of the General Court of 12 June 2014 and remitted the case (§ 151), concluded that "It follows that the fifth ground of appeal must be rejected in its entirety" (§ 65),[8] in

[4] See: BEHRENS P. The extraterritorial reach of EU competition law revisited – The "effects doctrine" before the ECJ. *Discussion Paper*. 2016, no. 3, pp. 8–10. [online]. Available at: https://www.econstor.eu/bitstream/10419/148068/1/87238506X.pdf

[5] Ibid., pp. 10–11.

[6] Ibid., pp. 11–14.

[7] Case T-286/09 Intel Corporation Inc. v. European Commission (Judgement of the General Court of the European Union of 12 June 2014). [online] Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1484603038618&uri=CELEX:62009TJ0286

[8] Case C-413/14 P Intel Corporation Inc. v. European Commission (Judgment of the Court (Grand Chamber) of 6 September 2017 [Text rectified by orders of 19 September and 24 October 2017]). ECLI:EU:C:2017:632. [online] Available at: http://curia.europa.eu/juris/document/document.js

which Intel argued that the General Court had incorrectly applied the (implementation/effects) tests in relation to the jurisdiction of the European Commission (§ 31, 33–34). The Court found inadmissible Intel's argument that the impact test cannot serve as a basis for the Commission's jurisdiction (§4 6), and therefore "…that argument must be rejected as unfounded" (§ 47).[9]

Finally, having transformed from *de lege ferenda over* half a century, the doctrine of influence has acquired the status of *de lege lata*, although historically the first instrument applied by the EU in the context of extraterritorial application of EU competition law was single economic entity doctrine. In general, its essence is that one enterprise may comprise several subsidiaries that are under the decisive control (influence) of the parent company, so intense as to exclude any actual ability of the subsidiary to form and/or independently implement its market behaviour. As a result, formally independent business entities – the parent and the subsidiary – are treated as one conditionally integral entity – a single economic entity. In light of the above, the presence in the EU of one of the members of a single economic entity makes it possible to hold it liable for the actions committed by another member of this entity that is located (registered or actually located) outside the EU. Significant shortcomings of the single economic entity doctrine as a jurisdictional model, including the controversial nature of its conceptual basis, and the failure to cover a number of anticompetitive actions committed outside the EU (formally based on the territorial connection between the EU and the foreign legal entity to which it applies), have gradually led to the fact that it has *ipso facto* lost its relevance as a jurisdictional model, while remaining an important institution of EU substantive law.[10]

3. Evolution of the CJEU's Practice of Applying Jurisdictional Models

In order to trace the dynamics of evolution of the practice of applying jurisdictional models, it is advisable to analyse landmark CJEU's judgments, which are fundamental for the formation and development of the single economic entity doctrine, including the judgment in *Dyestuffs* (Case 48/69 *Imperial Chemical Industries Ltd. v. Commission of the European Communities*), which concerned

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[9] Ibid.

[10] FALALIEIEVA, L. Prava liudyny ta ekstraterytorialna diia prava YeS: evoliutsiia praktyky zastosuvannia yurysdyktsiinykh modelei. Visnyk Kyivskoho natsionalnoho universytetu imeni Tarasa Shevchenka. Mizhnar. vidnosyny. 2017. Vyp. 1 (46). S. 93 (in Ukrainian).

a parent company from the United Kingdom, which was not a member of the European Economic Community (hereinafter referred to as EEC) at the time. The applicant, registered outside the EEA, argued that the Commission of the European Communities did not have jurisdiction to control actions taken outside the European Economic Area (hereinafter referred to as EEA) by foreign legal entities, and was not entitled to impose a fine, referring only to the fact that the actions taken by the non-resident outside the EEA common market had consequences for the latter. Given that the case concerned concerted actions, the CJEU had to find out whether the non-resident's behaviour had consequences for the EEC common market, whether there was a violation in the form of a price-fixing conspiracy, "directly or indirectly fix purchase or selling prices or any other trading conditions", i.e. Article 85(1) of the Treaty establishing the European Economic Community (now Article 101(1) of the Treaty on the Functioning of the European Union (hereinafter referred to as TFEU)). The applicant insisted that the behaviour should be attributed to the subsidiary rather than to him. However, having analysed the circumstances of the *Dyestuffs* case, the Court found that the fact that a subsidiary has the status of a separate legal entity is not sufficient to exclude the possibility of imputing the parent company's conduct to the former, especially if such a subsidiary does not independently determine its behaviour in the EEC common market, "does not enjoy real autonomy in determining its course of action" (§ 134),[11] but follows the instructions of the parent company, which "was able to exercise decisive influence" (§136–137),[12] , as a kind of presumption, cumulatively: "effective" and "actually exercised", on the content and nature of the subsidiary's market conduct. In this way, the CJEU authorised the extraterritorial application of EEC competition law. Its conclusions in this case can be applied to any concerted action, regardless of whether it was carried out by a single enterprise consisting of several subsidiaries or by different enterprises managed by separate legal entities.[13]

In its judgment in the case of *Continental Can* (Case 6/72 *Europemballage Corporation and Continental Can Company Inc. v. Commission of the European Communities*), CJEU ruled that the unlawful acts of a subsidiary of Europemballage registered in the EEC should be treated as if they were actually committed

[11] Case 48/69 Imperial Chemical Industries Ltd. v. Commission of the European Communities (Judgment of the ECJ of 14 July 1972), [1972] ECR 619. [online] Available at: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61969J0048&lg=en

[12] Ibid.

[13] FALALIEIEVA, L. Ekstraterytorialna diia norm prava YeS: osoblyvosti teorii ta praktyky zastosuvannia. Pam'iati profesora Pavla Petrovycha Zavorotka. Aktualni problemy pravovoi nauky: zb. nauk. statei / za zah. red. N. P. Shyshkovoi; Kyivskyi nats. un-t imeni Tarasa Shevchenka. Kyiv: Pretsedent, 2014. S. 156–157 (in Ukrainian).

by the parent company, Continental Can, located in the United States. Therefore, the fact that the parent company does not have a representative office in one of the EU Member States is not sufficient to exclude it from the application of EU law,[14] however, in practice it is extremely difficult to establish the degree of control over the subsidiary by such a parent company, for example, in a franchise (commercial concession) agreement or licence agreement.

The basic approach to the extraterritorial effect of EEC competition law was formulated by the CJEU in the *Wood Pulp* judgment (Case 129/85 *A. Ahlström Osakeyhtiö and others v. Commission of the European Communities*). The case arose out of concerted actions taken to fix the price of pulp (sulphite pulp used for paper production) by forty-one third-country producers and trade associations from Finland and the United States. The Commission of the European Communities, having found that such practice violated Article 85 of the Treaty establishing the European Economic Community (now Art. 101 TFEU) imposed penalties, stating that the impact of the agreements and practices on consumer prices within the EEC was significant, purposeful, and mainly and directly resulted from these agreements and practices,[15] thus, the impact of the latter, in the opinion of the Commission, is sufficient to apply the doctrine of influence as a jurisdictional model to this case. However, the CJEU decided to apply the principle of territorial jurisdiction in its judgment,[16] , i.e. the doctrine of implementation, one of the most common models for exercising extraterritorial jurisdiction. The legal position of the CJEU is that agreements and practices violate Article 101 TFEU regardless of their geographical origin, and the decisive factor is that they were presumed to have been implemented within the EU and affected trade between its Member States.

In *Wood Pulp,* the CJEU found that an infringement of EEC competition law, in particular the conclusion of an agreement that has led to a restriction of competition within the common market, consists of two elements of conduct: the formulation of an agreement, decision or other type of concerted action and its implementation. The case concerned concerted actions that had the purpose

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14 Case 6/72 Europemballage Corporation and Continental Can Company Inc. v. Commission of the European Communities (Judgment of the ECJ of 21 February 1973), [1973] ECR 215. [online] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61972CJ0006

15 Commission Decision 85/202/EEC of 19 December 1984 relating to a procedure under Article 85 of the EEC Treaty (IV/29.725 – Wood pulp). *Official Journal of the European Communities*. L 85, vol. 28, 26 March 1985, pp. 1-52. [online] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:1985:085:TOC

16 Joined cases 89, 104, 114, 116, 117 and 125 to 129/85 A. Ahlström Osakeyhtiö and others v. Commission of the European Communities (ECJ 28 September 1988), [1988] ECR 5193. [online] Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1484647592793&uri=CELEX:61985CJ0089(01)

and effect of restricting competition in the EEC common market. In this regard, it does not matter whether they acted through subsidiaries, agents, sub-agents or their own divisions in the EEC, contacting consumers within the Community. Accordingly, the EEC's jurisdiction to apply its competition rules to such conduct is based on the principle of territoriality, and the Court used the legal fiction that the EEC has "quasi-territorial jurisdiction".[17] *The Wood Pulp* judgment has significantly expanded the scope of application of EU competition law to activities and obligations of foreign origin. Finally, given the size and influence of the EU's internal market, it is theoretically possible that almost any pricing scheme can be disputed by the EU as it affects existing competition rules between its Member States.[18]

Practice shows that the EU possesses a wide discretion in determining the forms and mechanisms for exercising extraterritorial jurisdiction. The phenomenon of extraterritorial application of EU law has been most developed in the field of EU competition law, regulated primarily by Articles 101 and 102 of Chapter 1 "Rules on Competition" of Title VII "Common Rules on Competition, Taxation and Approximation of Laws" of the TFEU,[19] , as well as by secondary legislation relating to various aspects of this area of EU law. The possibility of extraterritorial application of EU competition law is explicitly provided for in the EC Merger Regulation No. 139/2004,[20] , adopted on 20 January 2004 by the Council of the European Union.

Articles 101 and 102 TFEU contain qualifying features of the infringements provided for therein, as well as geographical restrictions, indicating that the infringements must affect trade between Member States. Pursuant to Article 101 TFEU, the anticompetitive effect of an agreement or concerted action of undertakings must be caused within the EU internal market. According to Professor Ivo van Bael, the term "agreement" in the context of Article 101 TFEU is interpreted quite broadly and covers any agreement between the parties regarding

17 LANGE DIETER, G. F., SANDAGE, J. B. The Wood Pulp Decision and its Implications for the Scope of EC Competition Law. *Common Market Law Review*. 1989, issue 26, p. 157.

18 FALALIEIEVA, L. Vplyv sudovoi praktyky na ekstraterytorialnu diiu norm prava Yevropeiskoho Soiuzu. Aktualni doslidzhennia v yurysprudentsii: materialy mizhnar. nauk.-prakt. internet-konferentsii (Ternopil, 14 hrud. 2013 r.). Ternopil, 2013. S. 22–23. [online]. Available at: http://www.lex-line.com.ua (in Ukrainian).

19 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal of the European Union*. C 202/01. vol. 59, 7 June 201. [online] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C:2016:202:FULL&from=EN

20 Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation). *Official Journal of the European Union*. L 24. vol. 47, 29. January, 2004. pp. 1–22. [online] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2004:024:TOC&toc=OJ:C:2017:026:FULL

their future behaviour.[21] Article 101 TFEU provides a list of criteria for its application. *First,* there must be an agreement between enterprises, a decision of an association of enterprises or other types of concerted practice. *Secondly*, such agreements or concerted actions must affect trade between Member States. *Thirdly,* the purpose of such agreements or concerted practices or their effects must be to prevent, restrict or distort competition within the EU internal market.[22] It is noteworthy that Article 101 TFEU covers not only actual but also potential competition, which is determined by taking into account the market structure, economic and legal context within which the agreement is implemented.[23] Having studied the EU competition law and the practice of its application, Professor K. Smirnova proposes to distinguish between the regimes of anticompetitive behaviour in the EU internal market, which consist primarily of the criteria for the unlawfulness of actions of enterprises in this market (Article 101(1) TFEU) and a set of criteria that allow for the introduction of exceptions to these prohibitions (Article 101(3) TFEU). 101 TFEU),[24] and, in general, defines the following typology of anticompetitive behaviour in the EU internal market: first, the actions of undertakings in the market, subject to their bilateral or multilateral relations with each other in the form of agreements or concerted actions, acquire the legal status of anticompetitive agreements (Article 101 TFEU); secondly, the behaviour of undertakings resulting from their dominance within the EU internal market or a significant part of it is legally qualified as abuse of a dominant position (Article 102 TFEU). In addition, anticompetitive practices (Article 101 TFEU) are usually the result of agreements between different undertakings, while abuse of dominance (Article 102 TFEU) may be of a single nature, carried out by one undertaking, not excluding collective actions. The legal regulation of anticompetitive actions provides for the possibility of applying exceptions to the prohibitions imposed, while the mechanisms for regulating abuse of dominance do not contain such exceptions.[25] At the same time, Professor K. Smirnova emphasises that these components of anticompetitive behaviour are qualified on the basis of proof of their impact on

21 VAN BAEL, I. Due Process in EU Competition Proceedings. Alphen van den Rijn: Kluwer Law International, 2011, p. 19.

22 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal of the European Union*. C 202/01. Vol. 59, 7 June, 2016. [online] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C:2016:202:FULL&from=EN

23 VAN BAEL, I. Op. cit. p. 23.

24 SMYRNOVA, K. V. Pravovyi poriadok konkurentsii v Yevropeiskomu Soiuzi (novitni tendentsii rozvytku): avtoref. dys. … d-ra yuryd. nauk: 12.00.11 / Kyivskyi nats. un-t imeni Tarasa Shevchenka. Kyiv, 2015. S. 7 (in Ukrainian).

25 Ibid., p. 29.

the EU internal market,[26] are regarded as incompatible with it, which requires the restoration of fair competition relations and protection of economic competition in accordance with the competition rules established, primarily by the TFEU, which are necessary for the functioning of the EU internal market.[27]

Cases C 750/21 P and C 256/22 P *Pilatus Bank plc v European Central Bank (ECB)* emphasize that the application of foreign sanctions rules with extraterritorial application is not excluded in international trade or capital transactions[28]. At the same time, in order to exercise the powers of a certain national body to act extraterritorially, as was the case, for example, with the German national competition authority in case C 151/20 *Bundeswettbewerbsbehörde v Nordzucker AG, Südzucker AG, Agrana Zucker GmbH*, there must be an adequate legal basis, which, according to current EU legislation, can only come from the national legal system[29].

Obstructing, restricting, distorting competition or abusing a dominant position as unlawful conduct affecting trade between Member States may have a foreign origin, for example, when foreign companies impose unfair terms of trade by agreeing prices among themselves, dividing the EU internal market. Foreign companies may occupy a dominant position by abusing it in the EU internal market or a significant part of it, engaging in practices that violate Article 102 TFEU. It should be noted that the mere fact of achieving a dominant or monopolistic position does not constitute a violation, but rather an abuse of the advantages that such a position provides, i.e., it involves two independent actions, where the first does not always lead to the second. Mergers of foreign companies may also have consequences for competition within the EU internal market. The main criterion for the application of EU competition law, which is in fact a presumption, is the impact on the internal market or a significant part of it, affecting trade between Member States. The dynamics of trade relations in the EU internal market has gradually led to a tendency to expand the regulatory content of the concept of "abuse of dominance", which gave rise to the conclusion that: "the conditions of

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26 Ibid, p. 7.

27 FALALIEIEVA, L. Prava liudyny ta ekstraterytorialna diia prava YeS: evoliutsiia praktyky zastosuvannia yurysdyktsiinykh modelei. Visnyk Kyivskoho natsionalnoho universytetu imeni Tarasa Shevchenka. Mizhnar. vidnosyny. 2017. Vyp. 1 (46). S. 91–92 (in Ukrainian).

28 Pilatus Bank plc v European Central Bank (ECB). Opinion of Advocate General Kokott, 25 May 2023. Cases C750/21 P and C256/22 P. [online] Available at: https://curia.europa.eu/juris/document/document.jsf?text=extraterritorial&docid=274111&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3733838#ctx1

29 Bundeswettbewerbsbehörde v Nordzucker AG, Südzucker AG, Agrana Zucker GmbH. Opinion of Advocate General Bobek, 2 September 2021. Case C151/20. [online] Available at: https://curia.europa.eu/juris/document/document.jsf?text=extraterritorial&docid=245556&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3733838#ctx1

the EU market lead to an increase in the extraterritoriality of the application of EU law".[30] At the same time, the need to ensure the observance of human rights and respect for them leads to the spread of extraterritorial application of EU law.

Such application is often justified in judicial decisions as follows: the power to take restrictive measures falls within the scope of independent measures of the Union, adopted in the context of the Common foreign and security policy, in accordance with the objectives and values of the Union, namely *(inter alia)* with the aim of promoting democracy, the rule of law, as well as the universality and indivisibility of human rights and fundamental freedoms, which constitutes a common "legal interest" in relation to the rights in question, according to the case law of the International Court of Justice (Case T 65/18 RENV, *Bolivarian Republic of Venezuela v Council of the European Union)*.[31]

It should be noted that the regulations or directives necessary to apply the principles set out in Articles 101 and 102 TFEU are adopted by the Council of the EU on the initiative of the European Commission and after consultation with the European Parliament. The obligation to ensure compliance with the principles contained in these articles is vested in the European Commission, which, on its own initiative or at the request of a Member State, in cooperation with the competent authorities of the Member States assisting it, investigates alleged breaches of these principles and may impose a fine on the offending company. The European Commission is entitled to publish its decision and authorise Member States to take appropriate remedial measures under the conditions and in the manner prescribed by it (Article 105(1-2) TFEU).[32] It should be noted that the European Commission has certain discretionary powers in this area, which it exercises within the regulatory competence granted by the Member States.

As a rule, the European Commission considers a complaint: if more than three Member States are significantly harmed by the agreement or practice; if the complaint is closely related to other provisions of EU law that can be more effectively or exclusively applied by the Commission; or if the interests of the EU require a decision by the Commission for the development of EU competition

[30] SMYRNOVA, K. V. Pravovyi poriadok konkurentsii v Yevropeiskomu Soiuzi (novitni tendentsii rozvytku): avtoref. dys. … d-ra yuryd. nauk: 12.00.11 / Kyivskyi nats. un-t imeni Tarasa Shevchenka. Kyiv, 2015. S. 7 (in Ukrainian).

[31] Bolivarian Republic of Venezuela v Council of the European Union. Judgment of the General Court (Grand Chamber), 13 September 2023. Case T65/18 RENV. [online] Available at: https://curia.europa.eu/juris/document/document.jsf?text=extraterritorial&docid=277442&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=3733838#ctx1

[32] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal of the European Union*. C 202/01. Vol. 59, 7 June, 2016. [online] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C:2016:202:FULL&from=EN

policy. In practice, the European Commission may face difficulties in enforcing its decisions against foreign companies that do not agree to cooperate or are protected by their national governments. In order to prevent disputes, the European Commission tries to establish cooperation with the competent authorities of third countries. The substantive rules of the EU's founding treaties in the field of competition are stable, but this does not *ipso facto mean* that the powers of the EU institutions in the legal regulation of this area are unchanged. There is a tendency in the development of the law enforcement practice of the EU institutions towards changing the nature of evidence in proving violations of competition rules in the EU internal market from formal legal analysis by the European Commission to strengthening economic analysis, to a more economic justification of its decisions, which is embodied in the introduction of a test for a significant restriction of competition, more comprehensive than the dominance test that was practiced earlier; there is a tendency to change the individual approach to the mechanism of elaboration by the European Commission and approval by the EU Council of "block" exceptions to prohibited anticompetitive actions.[33]

The extraterritorial effect of EU competition law does not raise significant objections from third countries, such as Japan, which is because "there were only few cases which were related to the extraterritorial application of the EU competition law in the strict meanings".[34] The Japanese companies against which the European Commission made decisions and imposed fines were mostly engaged in commercial activities in the EU, for example, selling products or goods directly on the EU internal market or acting through their subsidiaries. For example, the European Commission imposed fines on the Japanese company Nintendo for violating Article 101 TFEU. Nintendo did not deny that the European Commission had extraterritorial jurisdiction over the company, as its contracts and relevant activities were directed to the EU internal market, where Nintendo sold its products. In this context, S. Peremot's statement that the exercise of the EU's extraterritorial jurisdiction must be justified and not necessarily related to the need to punish a violation, but may consist in the implementation of administrative and legal market protection functions[35], at the same time, the importance of respecting human rights, in particular of consumers and business entities in the

[33] SMYRNOVA, K. V. Pravovyi poriadok konkurentsii v Yevropeiskomu Soiuzi (novitni tendentsii rozvytku): avtoref. dys. … d-ra yuryd. nauk: 12.00.11 / Kyivskyi nats. un-t imeni Tarasa Shevchenka. Kyiv, 2015. S. 7 (in Ukrainian).

[34] SATO, C. Extraterritorial Application of EU Competition Law. Is It Possible for Japanese Companies to Steer Clear of EU Competition Law? *Journal of Political Science and Sociology*. 2010, no. 11, p. 41.

[35] PEREMOT, S. Ekstraterytorialne zastosuvannia konkurentnoho prava YeS: vynyknennia ta rozvytok yurysdyktsiinoi modeli. Ukrainskyi shchorichnyk mizhnarodnoho prava. 2009. Kyiv: Vyd-vo «Feniks», 2014. S. 388 (in Ukrainian).

EU internal market, including in the format of the mechanism of extraterritorial application of EU competition law, should not be underestimated.

4. Territorial Extension of EU Law in Relation to Human Rights Obligations

The extraterritorial effect of EU law is not limited to competition law. Other areas in which the extraterritorial application of EU law is possible are noteworthy, as they are all sensitive in this sense, just like competition.[36] For example, the EU also exercises extraterritorial jurisdiction through its personal data protection instruments. At the level of primary EU law, the right to personal data protection was enshrined in Article 16 TFEU and guaranteed by Article 8 "Protection of personal data" of the EU Charter, which, since its entry into force on 1 December 2009, has the same legal force as the EU founding treaties. At the same time, among the sources of secondary EU law, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation; entered into force on 25 May 2018) (hereinafter referred to as GDPR) adopted under the normal legislative procedure has a significant role in the development of the right to personal data. It is noteworthy that Directive 95/46/EC provided for the protection of human rights in the processing of personal data only in the context of the right to privacy. GDPR ensures the fundamental rights and freedoms of individuals, in particular, their right to the protection of personal data (Article 1(2)), which is not an absolute right; recognises that the protection of individuals in connection with the processing of personal data is a fundamental right (Article 1); regulates the basic principles of protection of this right (Articles 5–11); and discloses the mechanisms for transferring personal data to third countries or international organisations (Articles 44–50).[37] One of the important innovations introduced by GDPR is that it provides for new rules on the territorial scope of EU law in the field of personal data protection, which, as Wim Nauwelaerts emphasises,

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[36] See: BEHRENS, P., Op. cit., p. 14.

[37] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). *Official Journal of the European Union*. L 119, vol. 59, 4 May, 2016, pp. 1–88. [online] Available at: https://eur-lex.europa.eu/eli/reg/2016/679/oj

leads to a wider application of EU law,[38] expanding the territorial coverage, and therefore extending its extraterritorial effect. Thus, the EU practices the exercise of extraterritorial jurisdiction with the help of existing personal data protection instruments, which have been substantially updated.

At the same time, the EU remains concerned with the problem of adherence to the human rights-based approach, which is primarily seen as a set of specific requirements that are essentially indisputable: to promote respect for human rights; to protect them, in particular by providing access to remedies in cases of human rights violations in order to prevent further violations, restore the violated right and fair compensation to the victim; to facilitate the exercise, including by taking judicial measures, of the right to meet basic human needs and fundamental rights guaranteed by the EU, which cannot be satisfied solely by their personal efforts. Of course, the special nature of human rights, in particular the requirement that a person must be under the jurisdiction of the state of citizenship, limits the obligation of states to protect human rights outside their territory without the consent of the host state, but in the context of the above, these are fundamental rights guaranteed at the EU level. Thus, in order to guarantee the enjoyment of the relevant rights, the integration association must not only prevent human rights violations, ensure their observance, but also take effective measures to respond to such violations.

It should be borne in mind that "modern international law, guided by the doctrine of extraterritorial jurisdiction, does not question the territorial nature of the state's jurisdiction. At the same time, in the jurisdictional sense, territorial jurisdiction works as a general rule, while extraterritorial jurisdiction is, under certain conditions and in compliance with the relevant requirements, an exception to this rule".[39] In fact, the implementation doctrine, widely used by the EU, and the effects doctrine, which has been actively practiced by the United States for a long time,[40] under international law are conceptually different models of the exercise of extraterritorial jurisdiction. The extraterritorial effect of national law, based on the territorial or national theory of jurisdiction, does not cause significant objections from states, unlike effects doctrine, which initially caused an extremely negative reaction of states and their strong resistance, being one of

[38] NAUWELAERTS, W. The Extra-Territorial Reach of EU Data Protection Law. July 2019. p. 1. [online]. Available at: https://www.sidley.com/-/media/publications/the-extraterritorial-reach-of-eu-data-protectio-law.pdf?la=en

[39] PEREMOT, S. V. Ekstraterytorialna yurysdyktsiia. Entsyklopediia mizhnarodnoho prava: u 3 t. / redkol.: Yu. S. Shemshuchenko, V. N. Denysov (spivholovy) ta in.; In-t derzhavy i prava im. V. M. Koretskoho NAN Ukrainy. Kyiv: Akademperiodyka, 2017. T. 2: E–L. S. 49 (in Ukrainian).

[40] See: United States v. Aluminum Co. of America (Alcoa), 148 F.2d 416 (2d Cir. 1945). 12 March 1945. [online] Available at: https://law.justia.com/cases/federal/appellate-courts/F2/148/416/1503668/

the most effective and controversial jurisdictional models from the standpoint of international law. It is noteworthy that the critical perception of the doctrine of influence in the theory and practice of international law was so regardless of the scope of its application. At the same time, CJEU's legal positions are that international law constitutes a limitation of jurisdiction and serves as a starting point for interpreting the content of EU law.[41] At the same time, the positions articulated by the Court and its case law indicate a desire to preserve the autonomy of the legal order of the integration association and to ensure the protection of fundamental rights at the EU level as a hard core of human rights.[42]

Taking into account the practice of extraterritorial application of US national law, which has led to fierce resistance of other states to the application of the doctrine of influence, CJEU decided to apply the principle of territoriality (territorial jurisdiction), according to which the extraterritorial application of EU law is lawful if the damage is caused by a violation committed within its territory. The principle of territoriality provides for the extraterritorial application of EU law to actions that have been initiated or actually performed outside the EU, if at least one component of the main qualifying elements of these actions (mainly completion) has taken place within the EU. The principle of territoriality is well-established in many segments of EU competition law, but in certain areas (merger control, etc.) it is obviously ineffective and almost unusable. It is noteworthy that more than 60 years ago, Professor R. Jennings called the territoriality principle the most flexible and far-reaching technique for determining jurisdiction,[43] , which is confirmed by the current practice of its application.

The application of the territoriality principle is possible if the relevant (significant) *behavior* or (significant) *effects* take place within the EU, as "for territoriality to apply, it suffices that territorial effects could be identified, even absent any territorial conduct, or conversely that territorial conduct could be identified, even absent any territorial effects. The former is sometimes denoted as *objective*

41 Case C-377/98 Kingdom of the Netherlands v. European Parliament and Council of the European Union (ECJ 9 October 2001), [2001] ECR I-07079. [online] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61998CJ0377; Case C-149/96 Portugal v. Council (ECJ 23 November 1999), [1999] ECR I-08395. [online] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=ecli:ECLI:EU:C:1999:574; Case C-61/94 Commission of the European Communities v. Federal Republic of Germany (ECJ 10 September 1996), [1994] ECR I-03989. [online] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61994CJ0061&print=true

42 FALALIEIEVA, L. Prava liudyny ta ekstraterytorialna diia prava YeS: evoliutsiia praktyky zastosuvannia yurysdyktsiinykh modelei. Visnyk Kyivskoho natsionalnoho universytetu imeni Tarasa Shevchenka. Mizhnar. vidnosyny. 2017. Vyp. 1 (46). S. 94 (in Ukrainian).

43 JENNINGS R, Y. Extraterritorial Jurisdiction and the United States Antitrust Law. *British Year Book of International Law*. 1957, vol. 33, p. 157.

territoriality, and the latter as *subjective territoriality*".[44] In this context, Professor C. Ryngaert emphasises that subjective territoriality, as a model based on territorial behaviour, is particularly relevant to the issue of the EU's human rights obligations in the context of international agreements with third countries. It is important, in the author's opinion, that the decision to conclude an international agreement was made by the EU on the territory of the EU, and since this decision can be implemented on the territory of the EU, territorial human rights obligations arise, which require that the EU, before making a decision to conclude an international agreement, properly analyse its compatibility with human rights law or the impact of the latter on the exercise of human rights. When the EU fails to do so, it is this territorial failure that leads to the territorial extension of EU law in relation to the EU's human rights obligations.[45]

The effects doctrine/test as a jurisdictional model being established in the EU is generally based on the exercise of extraterritorial jurisdiction over acts that take place entirely outside the integration association, but meet the cumulative criteria, having a *direct* and *significant* impact on relations within its territory. In contrast to the implementation doctrine/test, its well-established core jurisdictional criterion is *consequences* or *effects* within the EU, without requiring any other link between the act and the EU. The effects doctrine/test is currently one of the most widely used jurisdictional models, which is also gradually being used by the EU to exercise its extraterritorial jurisdiction. This is clearly demonstrated by the judgements of the General Court and the Court of Justice, in particular, in *Intel Corporation Inc. v. European Commission*.[46]

The effects doctrine extends the application of the law of the state/EU as a regulatory jurisdiction to relations that arose and fully took place in the territory of another state/third country, having a connection with the state/EU as a regulatory jurisdiction only by virtue of the consequences, impact on the situation

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44 RYNGAERT, C. EU Trade Agreements and Human Rights: From Extraterritorial to Territorial Obligations. *International Community Law Review*. 2018, vol. 20, issue 3–4, p. 384. [online] Available at: https://www.researchgate.net/publication/326335056_EU_Trade_Agreements_and_Human_Rights_From_Extraterritorial_to_Territorial_Obligations/fulltext/5bb7a22e92851c7fde2f1d7d/EU-Trade-Agreements-and-Human-Rights-From-Extraterritorial-to-Territorial-Obligations.pdf

45 Ibid., pp. 384–385.

46 Case T-286/09 Intel Corporation Inc. v. European Commission (Judgement of the General Court of the European Union of 12 June 2014). [online] Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1484603038618&uri=CELEX:62009TJ0286; Case C-413/14 P Intel Corporation Inc. v. European Commission (Judgment of the Court (Grand Chamber) of 6 September 2017 [Text rectified by orders of 19 September and 24 October 2017]). ECLI:EU:C:2017:632. [online] Available at: http://curia.europa.eu/juris/document/document.jsf;jsessionid=C1072FDD4C1F6DEEF6ED0356BE445505?text=&docid=194082&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=353468

within its territory, therefore, the jurisdictional basis, the conceptual basis of this model of exercising extraterritorial jurisdiction is precisely the consequences that an action committed outside the regulatory jurisdiction of the state/EU causes on its territory. As Professor C. Ryngaert notes, the this doctrine (standard) creates a political and legal relationship between the obligation bearer, in this case the EU, and a natural or legal person under the jurisdiction of a third country, while, the scholar concludes, the former has no democratic legitimacy over the person concerned.[47] At the same time, A. Berkes concludes that, after all, the EU has a positive obligation to ensure compliance with *jus cogens* and *erga omnes obligations,* primarily to protect the physical integrity of persons in third countries.[48]

The possible emergence of situations in which the implementation of agreements violating EU competition law will take place outside its internal market will actualise the application of the effects doctrine. In this regard, CJEU case law is noteworthy, as it indicates that the EU, like any other state, has the right to extraterritorially apply its competition law if the anticompetitive impact on its market is direct, significant and reasonably expected. Many scholars and practitioners have a negative attitude to the effects doctrine, arguing that the principle of territoriality (territorial jurisdiction) allows the CJEU to protect the internal market of the integration association, avoiding the application of the controversial, in their opinion, effects doctrine, given the excessively wide spread of jurisdiction based on it. Despite the European Commission's repeated attempts and the advocates general's strong recommendations to incorporate the effects doctrine into EU law as an acceptable jurisdictional model for the exercise of extraterritorial jurisdiction, by "self-disqualification" the CJEU has long demonstrated its complete rejection, avoiding, even at the level of general rhetoric, the possibility of using it. Without explicitly rejecting the application of the effects doctrine, the Court has consistently favoured the territorial connection between the EU as a regulatory jurisdiction and the act (violation) or individual/legal entity to which such jurisdiction applies,[49] using the implementation test as the basic jurisdictional model.

In the *Gencor* judgment (*Case* T-102/96 *Gencor Ltd v. Commission of the European Communities*), which concerned merger control, the CJEU, formally guided by the narrower, but more justified from the standpoint of international

47 RYNGAERT, C. Op. cit., p. 382.

48 BERKES, A. The extraterritorial human rights obligations of the EU in its external trade and investment policies. *Europe and the World: A law review*. 2018, vol. 2, issue 1, p. 21. [online] Available at: https://bura.brunel.ac.uk/bitstream/2438/19661/1/FullText.pdf.

49 FALALIEIEVA, L. Prava liudyny ta ekstraterytorialna diia prava YeS: evoliutsiia praktyky zastosuvannia yurysdyktsiinykh modelei. Visnyk Kyivskoho natsionalnoho universytetu imeni Tarasa Shevchenka. Mizhnar. vidnosyny. 2017. Vyp. 1 (46). S. 94 (in Ukrainian).

law, principle of territorial jurisdiction, finally, in a moderately prudent and far-sighted manner, allowed for at least limited application of the conceptually and legally clearer, albeit controversial from the standpoint of the basic principles and norms of international law, effects doctrine as an acceptable jurisdictional model for the exercise of extraterritorial jurisdiction.[50] Of course, in this way, the foundations were laid for the establishment of effects doctrine in the CJEU case law. However, despite further substantial modification in terms of narrowing, in particular by introducing additional limiting criteria for jurisdictional analysis, effects doctrine continues to be an overly expansive jurisdictional model. Thus, the evolution of the practice of applying jurisdictional models is accompanied by the modification of the latter, emphasising "the Commission's desire to expand its control competence, which is to some extent balanced by the Court's rather cautious attitude to the overly broad extension of jurisdiction. Although this position of the Court may not always seem consistent, in general, the Court tries to balance on the edge of least interference and operate with models that are at least formally justified from the point of view of international law".[51]

The well-established CJEU case law indicates that rules of EU law on the free movement of persons, including employees, applies to all legal relations which, given the place where they were initiated or actually performed, can *ipso facto* be considered to have taken place in the EU (§ 6).[52] It follows that activities temporarily carried out outside the EU territory do not preclude the application of EU law to them under certain conditions and subject to the relevant requirements, such as that the employment relationship described below retains a sufficient legal connection with one of the Member States. To establish the existence of a sufficiently close connection, the main criterion is the relationship between the employment relationship and the law of one of the Member States, and thus with EU law.[53] As Professor H. Khrystova notes, "the issue of balance between the universality of human rights and ensuring a realistic approach to human rights obligations that a state is able to fulfil beyond its borders, in particular,

50 Case T-102/96 Gencor Ltd v. Commission of the European Communities (ECJ 25 March 1999), [1999] ECR II-00753. [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1484653360889&uri=CELEX:61996TJ0102

51 PEREMOT, S. Ekstraterytorialne zastosuvannia konkurentnoho prava YeS: vynyknennia ta rozvytok yurysdyktsiinoi modeli. Ukrainskyi shchorichnyk mizhnarodnoho prava. 2009. Kyiv: Vyd-vo «Feniks», 2014. S. 388 (in Ukrainian).

52 Case 237/83 SARL Prodest v. Caisse Primaire d'Assurance Maladie de Paris (ECJ 12 July 1984), [1984] ECR 03153. Para. 6. [online] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61983CJ0237

53 FALALIEIEVA, L. Modern Approaches to the Extraterritorial Application of the EU Law. *European Studies – The Review of European Law, Economics and Politics*. 2014, vol. 1, p. 109.

the fulfilment of positive obligations, including those relating to socio-economic rights, remains relevant".[54]

Thus, in the case of *Mário Lopes da Veiga* (Case 9/88 *Mário Lopes da Veiga v. Staatssecretaris van Justitie*), the CJEU determined that the proper criteria for establishing a sufficiently close connection are as follows: *first,* the person worked on a ship registered in the Netherlands; *second,* they were employed by a Dutch company; *third,* the relevant employment relationship was governed by Dutch national law; *fourth,* the person paid taxes and social security contributions to the Dutch social security system.[55] Thus, the CJEU concluded that the applicant, a Portuguese citizen, was subject to EU law on the free movement of workers, despite the fact that the disputed legal relationship had started before Portugal joined the EU.[56]

The integration association is trying to extend the application of EU law in the field of environmental protection.[57] One example is the inclusion of international air transport in the European Emissions Trading System (EETS) in 2008. According to the provisions of Directive 2008/101/EC of 19 November 2008, starting from 1 January 2012, all international flights with a place of departure or arrival in the territory of EU Member States are subject to the European Emissions Trading System regardless of the country of registration of the aircraft.[58] The emissions are calculated for the entire flight distance, which leads to the inclusion of emissions over the high seas or the territory of a third country. The EU's position has provoked considerable international opposition, in particular, twenty-one states, including the United States, Japan, China, and India, adopted a Joint Declaration in New Delhi on 30 September 2011, stating that the EU's

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[54] KHRYSTOVA, H. Pozytyvni zobov'iazannia derzhavy u sferi prav liudyny: suchasni vyklyky: monohr. Kharkiv: Pravo, 2018. S. 464 (in Ukrainian).

[55] Case 9/88 Mário Lopes da Veiga v. Staatssecretaris van Justitie (ECJ 27 September 1989), [1989] ECR 02989. [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1484604389892&uri=CELEX:61988CJ0009

[56] See: FALALIEIEVA, L. Vplyv sudovoi praktyky na ekstraterytorialnu diiu norm prava Yevropeiskoho Soiuzu. Aktualni doslidzhennia v yurysprudentsii: materialy mizhnar. nauk.-prakt. internet-konferentsii (Ternopil, 14 hrud. 2013 r.). Ternopil, 2013. S. 22–23. [online] Available at: http://www.lex-line.com.ua. (in Ukrainian)

[57] MEDVEDIEVA, M. O. Teoretychni ta praktychni aspekty realizatsii mizhnarodno-pravovykh norm u haluzi okhorony navkolyshnoho seredovyshcha / za nauk. red. prof. O. V. Zadorozhnoho. Kyiv: Feniks, 2012. S. 349. Медведєва М. О. Теоретичні та практичні аспекти реалізації міжнародно-правових норм у галузі охорони навколишнього середовища / за наук. ред. проф. О. В. Задорожнього. Київ: Фенікс, 2012. С. 349 (in Ukrainian).

[58] Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community. *Official Journal of the European Union*. L 8, 13 January, 2009, pp. 3–21. [online] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008L0101

plans to include such emissions in the European Emissions Trading System are incompatible with international law.[59]

The above resulted in the judgment of 21 December 2011 *Air Transport Association of America* (Case 366/10 *The Air Transport Association of America and Others v. Secretary of State for Energy and Climate Change),* in which the CJEU ruled that as soon as an aircraft is on the territory of one of the EU Member States, especially while it is at an airport of one of them, it falls under the jurisdiction of that Member State and, consequently, of the EU.[60] Therefore, Directive 2008/101/EU of 19 November 2008 does not affect the sovereignty of third countries over their airspace and does not violate the freedom of flight over the high seas. Only air carriers that decide to operate commercial flights departing or arriving at an airport located in one of the EU Member States are subject to EU legal regulation.[61] The CJEU also stated that the EU has the right to allow commercial activities, in this case air transportation, to be carried out on its territory, provided that such activities meet the criteria established by the EU. Thus, the fact that some of the emissions harmful to the air or water space or land of the Member States are made outside their territory does not call into question the possibility of applying EU law to the entire length of the flight.[62] The above indicates a tendency to extend the extraterritorial application of EU law to previously unreached areas, an increase in the number of EU law sources as instruments supporting the dynamics of this process, and the growing importance in this context of ensuring respect for human rights, which permeate all dimensions of the EU's activities and serve as a unifying factor.

5. Conclusions

A systematic analysis of the sources gives grounds to conclude that it is at the level of primary EU law that the right to personal data protection (which is not an

[59] See: FALALIEIEVA, L. Modern Approaches to the Extraterritorial Application of the EU Law. *European Studies – The Review of European Law, Economics and Politics*. 2014, vol. 1, p. 109.

[60] Case C-366/10 Air Transport Association of America and Others v. Secretary of State for Energy and Climate Change (Judgment of the Court of 21 December 2011), [2011] ECR 2011-00000. [online] Available at: http://curia.europa.eu/juris/document/document.jsf?text=&docid=117193&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=106658

[61] DOVER, R., FROSINI, J. *The Extraterritorial Effects of Legislation and Policies in the EU and US. Brussels: European Parliament.* 2012, p. 16.

[62] FALALIEIEVA, L. Ekstraterytorialna diia norm prava YeS: osoblyvosti teorii ta praktyky zastosuvannia. Pam'iati profesora Pavla Petrovycha Zavorotka. Aktualni problemy pravovoi nauky: zb. nauk. statei / za zah. red. N. P. Shyshkovoi; Kyivskyi nats. un-t imeni Tarasa Shevchenka. Kyiv: Pretsedent, 2014. S. 160 (in Ukrainian).

absolute right) was first enshrined on the EU, not EEC level, in Article 16 TFEU and guaranteed by Article 8 "Protection of personal data" of the EU Charter, which is integrated into EU law as having equal legal force with the founding treaties. At the same time, among the sources of secondary EU law, GDPR plays a significant role in the development of the right to personal data, which, *inter alia*, recognises the protection of individuals with regard to the processing of personal data as a fundamental right, and reveals the mechanisms for transferring personal data to third countries or international organisations. Thus, an important innovation is the expansion of the territorial scope of the EU law on personal data protection, which makes it possible to extend its extraterritorial application. Thus, the EU also exercises extraterritorial jurisdiction with the help of existing personal data protection instruments, which have been substantially updated.

When establishing the fact that the European Commission has extraterritorial competence, the single economic entity doctrine was used as a jurisdictional model/standard for a relatively short time, which was replaced in the case law by the implementation doctrine, but now the effects doctrine is gradually being established in the CJEU's case law, contributing to the focus on rethinking the existing approaches. Thus, the search for the most optimal, most justified, utilitarian and effective model/test for the exercise of the EU's extraterritorial jurisdiction, which would be the least critically perceived from the standpoint of international law, is still ongoing.

Finally, third countries may not recognise the extraterritorial effect of EU law, which may lead to disputes. In order to prevent and minimise them, the EU, its Member States and third countries, *inter alia*, resort to legal means of resolving jurisdictional conflicts on the above issues, in particular, by concluding international agreements (varying in legal form: association agreement, cooperation agreement, etc.), mutual notification of possible investigations by the parties in the relevant areas, consultations and other instruments. The above-mentioned actualises the harmonisation of legal regulation and convergence of its application in the field of human rights. An important role in this context is played by the EU treaty-concluding practice, CJEU's case law, the evolution of the jurisdictional models used and the development of the human rights protection system in the EU.

With the entry into force of the Lisbon Treaty and the EU Charter, the integration association is increasingly paying attention to the issue of protecting fundamental rights. Making the EU Charter legally binding is a significant step forward in the development of integration processes and the formation of a European identity. Practice shows that the scope of application of fundamental rights corresponds to the scope of EU law, while the latter tends to expand in the context of expanding international cooperation and deepening international economic integration.

The EU Charter, having evolved from a political declaration to a legal instrument of European integration, has played a crucial role in establishing the protection of fundamental rights at the EU level as a specific new category of opportunities for the realisation of human rights in the integration legal order. The definition of fundamental rights as a "hard core" of human rights confirmed and guaranteed by the EU seems to be important for understanding the conceptual approaches of the EU Charter's authors. The EU Charter and the conceptual ideas it contains have contributed to the further development of some basic human rights concepts that had evolved before its entry into force, partly as a result of case law, partly as a response to changes in the concept of human dignity, and partly as a result of responding to real and potential challenges. In fact, ensuring the observance of fundamental rights at the EU level is intended to maintain a sustainable balance between this integration association, on the one hand, and human dignity and respect for human rights, regardless of the presence of a person's EU citizenship, on the other hand.

The study and comprehension of the current case law on the application of the EU Charter leads to the conclusion that, on the one hand, the case law of the CJEU contributes to the fullest understanding of the scope of application of fundamental rights as a hard core of human rights, and, on the other hand, there are still many uncertainties and related inconsistencies that are still visible and to some extent are due to the CJEU's casuistry. The scope of application of fundamental rights requires proper justification, and the elimination or at least reduction of this uncertainty falls within the jurisdiction of the CJEU. At the same time, it is possible that the Court deliberately leaves certain fundamental aspects of this issue open and non-transparent. These are differences that have important practical implications for the Member States, as they retain obligations under both national law and international, in particular European, human rights law, which are not replaced by the EU Charter and indicate the existence of multi-level protection of fundamental rights in the EU.

The legal basis for the practical application of measures of extraterritorial effect of EU law in the internal legal order of third countries in relations between the EU and third countries is the provisions of the founding treaties, the EU Charter and secondary EU law, primarily in the areas of competition, investment, foreign trade, financial services, environmental protection, and personal data protection. With the entry into force of the Lisbon Treaty, the establishment of the EU's international legal personality and its growing role in the international arena, it demonstrates a clear trend towards expanding the areas in respect of which EU law is applied extraterritorially to ensure respect for human rights, the proper functioning of the EU internal market and the EU legal order, primarily the effective implementation of the provisions of the founding treaties, the EU

Charter and EU legislation, while respecting the essence of fundamental rights. A competent determination of the geographical scope of the EU Charter is extremely important, but the CJEU has not yet given an unambiguous answer as to its possible extraterritorial application.

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