

Expanding the Territorial Reach of European Union Law: Current Realities and Trends

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Summary: The article explores practice of expanding territorial scope of EU law, emphasizing the extraterritorial application regarding third countries through international agreements and acts of the EU institutions. This expansion is influenced by the universality of human rights and the need for economic integration, which involves complex legal relationships with third countries, notably Ukraine. It discusses the inconsistency in case law, affecting legal certainty in extraterritorial contexts. Additionally, the impact of EU law on the legal systems of third countries is studied, especially in economic relations, for example, in the area of free trade and free capital movement. The article highlights the EU's commitment to integrating human rights considerations across all external policies, ensuring that its activities comply with international standards in human rights area, backed by EU common values and principles of EU law.

Keywords: EU law, common values, Court of Justice of the European Union, extraterritorial application of the EU law, extraterritoriality of human rights, territorial reach of the EU law, fundamental rights, EU internal market, free trade, free movement of capital, the EU trade and investment policy.

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1. Introduction

In the legal framework for the implementation of the extraterritorial application of the European Union (hereinafter referred to as the EU) law in the internal legal orders of third countries, there is a tendency toward an increase the importance of international agreements and *mutatis mutandis* acts of the EU institutions as legal instruments for expanding the territorial reach of EU law, aimed at causing legal consequences in the internal legal orders of third countries, having legal impact on them, as well as on individuals or legal entities under jurisdiction of third countries. The universality of human rights is obviously important, but it is not enough to justify extraterritorial application of EU law. In addition, it is noteworthy that the universal approach to human rights requires a broad concept of extraterritorial jurisdiction, rather than the proposed contradictory arguments in favor of alternative interpretive theories,¹ which are not properly argued, mostly limited to the reference to “impose fundamental rights standards enshrined in an international treaty on States that are not party to that treaty”.² As noted by Enzo Cannizzaro, Professor of International Law and European Union Law at the University of Rome “La Sapienza”, fundamental rights do not imply selective protection of individuals, *ratione loci*, but rather a reduction of the unlimited discretion of state authorities. Restricting them to a certain geographical area or defining conditions of application undermines the logic and the very *raison d’être* of the sphere of fundamental rights.³ The issue of extraterritoriality in the EU’s activities arises not only when it comes to human rights protection, it may also emerge in such areas as EU competition, foreign direct investment⁴ resulting from free capital movement, consumer and environmental law. One else example related to environmental, administrative and criminal law: third-country vessels are not subject to EU jurisdiction on the high seas, however, once they call at an EU port, they can be held liable for

¹ See: MILLER, S. Revisiting Extraterritorial Jurisdiction: A Territorial Justification for Extraterritorial Jurisdiction under the European Convention. *European Journal of International Law*. 2009, vol. 20, no. 4. p. 1223. [online]. Available at: <https://academic.oup.com/ejil/article/20/4/1223/530744>.

² HUMMELBRUNNER, S. Beyond Extraterritoriality: Towards an EU Obligation to Ensure Human Rights Abroad? Reflections in Light of the *Front Polisario Saga*. *CLEER Papers*. 2019, no. 2. p. 28. [online]. Available at: https://www.asser.nl/media/679407/cleer_19-02_web.pdf.

³ CANNIZZARO, E. The EU’s Human Rights Obligations in Relation to Policies with Extraterritorial Effects: A Reply to Lorand Bartels. *The European Journal of International Law*. 2014, vol. 25, no. 4. p. 1094. [online]. Available at: https://ciaotest.cc.columbia.edu/journals/ejil/v25i4/f_0033361_27136.pdf.

⁴ See: RODRIGUES, N. C. (Editor). *Extraterritoriality of EU Economic Law: The Application of EU Economic Law Outside the Territory of the EU*. Cham, Switzerland, Springer, 2021, 385 pp.

illegal high-seas fishing;⁵ for such types of violations administrative sanctions and even criminal penalties are possible.⁶

Conceptual approaches to the application of extraterritorial legal measures by the EU, analysis of the areas of legal regulation covered by the extraterritorial effect of EU law and case law on these issues by judicial bodies, and doctrinal constructions of extraterritoriality of human rights are relevant and under-researched issues of great theoretical, methodological and practical importance for the modern science of international law and EU law.

In Ukraine, not only monographic works, but also publications focused on or related to this complex and controversial topic are rare, but it is dynamically developing in case law of judicial and quasi-judicial international bodies, and has been thoroughly covered in foreign legal literature⁷ over the past two decades

⁵ KRISCH N. Jurisdiction Unbound: (Extra)territorial Regulation as Global Governance. *European Journal of International Law*. 2022, vol. 33, no. 2, p. 491. [online]. Available at: <https://academic.oup.com/ejil/article/33/2/481/6647799>.

⁶ See: BEKE, M., BLOMEYER, R. *Illegal, unreported and unregulated fishing: sanctions in the EU*. European Parliament Directorate General for Internal Policies, Policy Department B: Structural and Cohesion Policies. Brussels, European Parliament, 2014. [online]. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2014/529069/IPOL_STU\(2014\)529069_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2014/529069/IPOL_STU(2014)529069_EN.pdf).

⁷ HUMMELBRUNNER, S. Beyond Extraterritoriality: Towards an EU Obligation to Ensure Human Rights Abroad? Reflections in Light of the *Front Polisario Saga*. *CLEER Papers*. 2019, no. 2. 50 p. [online]. Available at: https://www.asser.nl/media/679407/cleer_19-02_web.pdf; VELLUTI, S., TZEVELEKOS, V. P. Extraterritoriality of EU law and human rights after Lisbon: the case of trade and public procurement. *Europe and the World: A law review*. 2018, vol. 2, no. 1. pp. 1–9. [online]. Available at: <https://livrepository.liverpool.ac.uk/3027467/1/EWLR-2-2.pdf>; 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, no. 1. pp. 1–21. [online]. Available at: <https://bura.brunel.ac.uk/bitstream/2438/19661/1/FullText.pdf>; RYNGAERT, C. EU Trade Agreements and Human Rights: From Extraterritorial to Territorial Obligations. *International Community Law Review*. 2018, vol. 20, no. 3–4. pp. 374–393. [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; BEHRENS, P. The extraterritorial reach of EU competition law revisited – The «effects doctrine» before the ECJ. *Discussion Paper*. 2016, no. 3. pp. 3–15. [online]. Available at: <https://www.econstor.eu/bitstream/10419/148068/1/87238506X.pdf>; ŠIŠKOVÁ, N. The EU Concept of the Rule of Law and the Procedures *de lege lata* and *de lege ferenda* for its Protection. *International and Comparative Law Review*. 2019, vol. 19, no. 2. pp. 116–130. [online]. Available at: <https://sciendo.com/de/article/10.2478/iclr-2019-0017>; HAMULÁK, O., VARDANYAN, L., KOCHARYAN, H. The Global Reach of the Right to be Forgotten through the Lenses of the Court of Justice of the European Union. *Czech Yearbook of Public and Private International Law*. 2021, vol. 12, pp. 196–211. [online]. Available at: <https://rozkotova.cld.bz/CYIL-vol-12-2021/196/>; Global Justice, State Duties: The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law / ed. by Malcolm Langford, Wouter Vandenhoe, Martin

taking into account geographical coverage of the EU's human rights obligations and the impact of EU international agreements on the implementation of human rights in third countries,⁸ extraterritorial case law of the Court of Justice of the European Union (hereinafter referred to as the CJEU), inconsistency of the European Court of Human Rights (hereinafter referred to as the ECtHR) case law,⁹ and thus its unpredictability, which does not contribute to the level of legal certainty on such complex issues that require, *inter alia*, clarity and comprehensibility.

The results of the work of scientists, including A. Berkes, C. Gammage, O. Hamulák, S. Hummelbrunner, N. Krisch, S. Miller, N. Rodrigues, C. Ryngaert, N. Šišková, V. Tzevelekos, S. Velluti will contribute to deepening partnership with the EU on a parity basis and taking into account the peculiarities of the extraterritorial effect of EU law and modern mechanisms for its implementation. Thus, we are talking about extremely important and quite real problems that, on the one hand, raise fundamental issues that remain unresolved and controversial, and, on the other hand, have legal and political consequences. In this context, the ongoing academic discourse offers valuable insights for shaping future legal regulation and fostering mutual understanding between the EU and third countries. The interplay between national sovereignty and extraterritorial reach of EU law remains a dynamic area of study, with practical implications for legal consistency and the protection of fundamental rights.

2. Extraterritoriality of EU Law as a Multidimensional Problem

The relevance of the issue of extraterritorial action / application of EU law (interchangeable terms) in the context of ensuring respect for human rights lies in the fact that, on the one hand, its mechanisms should be taken into account in the process of European integration and fulfillment of the obligations assumed, and, on the other hand, the effective functioning of the EU legal

Scheinin, Willem van Genugten. Cambridge: Cambridge University Press, 2013. 477 p.; KRISCH N. Jurisdiction Unbound: (Extra)territorial Regulation as Global Governance. *European Journal of International Law*. 2022, vol. 33, no. 2. pp. 481–514. [online]. Available at: <https://academic.oup.com/ejil/article/33/2/481/6647799>.

⁸ RYNGAERT, C. EU Trade Agreements and Human Rights: From Extraterritorial to Territorial Obligations. *International Community Law Review*. 2018, vol. 20, no. 3–4, pp. 375–393. [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.

⁹ MILLER S. Op. cit. pp. 1223–1246.

order, extraterritorial application of EU law, is impossible if the extraterritorial jurisdiction of the Member States is excluded from the scope of EU law.¹⁰ In this case, the extraterritorial jurisdiction of a state means “the exercise..., under certain conditions and in compliance with the relevant international legal standards, of jurisdiction over acts, property, persons or facts that take place wholly or partially outside its territory”,¹¹ but have a certain connection with it. The definition of extraterritorial jurisdiction proposed by Serhiy Peremot enriched the Ukrainian science of international law, which for a long time developed without paying due attention to the peculiarities of theory and practice in this area. It is noteworthy that the concept of extraterritoriality, having extensive semantic connotations, is part of the basic terminology of the general theory of law and is revealed in the context of the topic “effect of legal acts in time, space and by the circle of persons”.¹² The extraterritorial effect of EU law in the internal legal orders of third countries reflects the evolution and priorities of the EU legal policy, which is based *stricto sensu* on common values, in particular on respect for human rights, as well as on EU standards, which is a complex and under-researched issue.

The current EU-Ukraine treaty practice emphasizes the importance of researched topic, and understanding of these issues will contribute to: ensuring respect for human rights; predictability of the mechanisms for implementing the political association and economic integration of Ukraine with the EU; strengthening economic relations between the parties; gradual integration of Ukraine into the EU internal market and adaptation of Ukrainian legislation and its application to EU law. In addition, it is necessary to take into account the following: national interests; current EU standards, policies and practices; peculiarities of the functioning of its institutional and legal system; modern approaches to the extraterritorial effect of EU law; and the evolution of the CJEU’s application of jurisdictional models. It is equally important to be familiar with the legal intricacies of the relevant EU legal acts, as well as to introduce the practice of compliance with the regulatory methods underlying the functioning of the integration association, the basis of the human rights protection system formed

¹⁰ FALALIEIEVA, L. Ekstraterytorialna diia norm prava YeS: osoblyvosti teorii ta praktyky zastosuvannya. *Pamiati 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, pp. 154–161. (in Ukrainian).

¹¹ 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: Akadempriodyka, 2017. T. 2: E–L. s. 49 (in Ukrainian).

¹² See: KHRYSTOVA, H. *Pozytyvni zobov’iazannia derzhavy u sferi prav liudyny: suchasni vyklyky*: monohr. Kharkiv: Pravo, 2018, 680 p. (in Ukrainian).

within its framework.¹³ It is also noteworthy that, as Lorand Bartels states, the EU is not formally bound by any international human rights treaties, including the Convention for the Protection of Human Rights and Fundamental Freedoms (better known as the European Convention on Human Rights; hereinafter referred to as ECHR).¹⁴ This is mainly due to the lack of relevant competence in the EU. However, since 2011, the EU has been a party to one multilateral international human rights treaty, approved by the European Parliament¹⁵ on December 23, 2010, the UN Convention on the Rights of Persons with Disabilities, which is the first UN international treaty on these issues that contains minimum standards without creating new rights for persons with disabilities.

The EU's accession to the ECHR, without setting clear deadlines for its implementation, is provided for in Article 6(2) of the Treaty on European Union (hereinafter referred to as the TEU) as amended by the Lisbon Treaty of 2007. At the same time, the study of the ECtHR's extraterritorial case law leads to the conclusion that it is not consistent, and therefore does not contribute to overcoming uncertainty in some issues, and to increasing the level of legal certainty in others.¹⁶ As Sarah Miller emphasizes, this uncertainty creates a double risk that states will either underestimate the jurisdictional scope of ECHR and violate human rights that might otherwise be protected, or, conversely, they will overestimate the reach of the ECHR and refrain from taking actions that are strategically important. In any case, the ECtHR's dual doctrine does not allow states parties to clearly consider the legal responsibilities associated with specific extraterritorial actions to the detriment of both human rights and security.¹⁷

The above is important, in particular, in the sense of Article 52(3) of the Charter of Fundamental Rights of the European Union (hereinafter referred to as the EU Charter), which textually confirms that if the EU Charter contains rights that coincide with the rights guaranteed by the ECHR, the *meaning* and *effect* of these rights are the same as those granted by the latter. This provision does not

¹³ FALALIEIEVA, L. Prava liudyny ta ekstraterytorialna diia prava YeS: evoliutsiia praktyky zasto-suvannya yurysdyktsiinykh modelei. *Visnyk Kyivskoho natsionalnoho universytetu imeni Tarasa Shevchenka*. Mizhnar. vidnosyny. 2017, vo. 46, no. 1, p. 91. (in Ukrainian).

¹⁴ BARTELS, L. The EU's Human Rights Obligations in Relation to Policies with Extraterritorial Effects. *The European Journal of International Law*. 2014, vol. 25, no. 4, p. 1079. [online]. Available at: <http://www.ejil.org/pdfs/25/4/2546.pdf>.

¹⁵ The Evolution of Fundamental Rights Charters and Case Law. Study. Brussels, European Parliament, 2011. [online]. Available at: [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/432755/IPOL-AFCO_ET\(2011\)432755_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/432755/IPOL-AFCO_ET(2011)432755_EN.pdf).

¹⁶ FALALIEIEVA, L. Zakhyst osnovopolozhnykh prav u inteɦratsiinomu pravoporiadku Yevropeiskoho Soiuzu: monohrafiia. Kyiv, 2020, pp. 197–198. (in Ukrainian).

¹⁷ MILLER, S. op. cit. p. 1230.

prevent the EU law from being granted broader protection¹⁸ in comparison with the ECHR, but, according to the second paragraph of Article 6(1) TEU as amended by the Lisbon Treaty 2007, it does not in any way expand the competence of the EU as defined in the founding treaties. In addition, Article 52(3) of the EU Charter creates synergy with the ECHR, so the interpretation of the latter by the ECtHR and its case law (which is not consistent with respect to extraterritoriality, and therefore difficult to apply) is usually taken into account by the CJEU. The integration association is not currently a party to the ECHR, but this possibility is not excluded in the future. Professor Cedric Ryngaert emphasizes that, given the EU's competence, cases on extraterritoriality arising under the EU Charter may differ significantly from those arising under the ECHR, as the ECtHR cases so far have mainly concerned extraterritorial military operations carried out by States Parties to the ECHR.¹⁹ Moreover, as Clair Gammage emphasizes, from the standpoint of international law, human rights have so far been conceptualized as the granting of rights, duties and obligations through a state-centered relational model.²⁰ Of course, the EU's phenomenality is also clearly manifested in its conceptualization of fundamental rights, which constitute the so-called *hard core* of human rights, recognized, confirmed and guaranteed by a supranational association with an autonomous legal order.

An inclusive approach to legal regulation is evident in the EU Charter, which is characterized by the broadest possible concept of fundamental rights, generalized and systematically combined *mutatis mutandis* within one comprehensive document, emphasizing their unity and indivisibility. Within the competence of the EU granted to it under the founding treaties and in compliance with the principle of subsidiarity, the provisions of the EU Charter are addressed to the institutions, bodies, agencies, and services of the integration association. Observance of fundamental rights is a condition for the validity and legitimacy of EU acts, but the situation with regard to national legislation of the Member States

¹⁸ Charter of Fundamental Rights of the European Union. *Official Journal of the European Union*. C 202/02. 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>.

¹⁹ RYNGAERT, C. EU Trade Agreements and Human Rights: From Extraterritorial to Territorial Obligations. *International Community Law Review*. 2018, vol. 20, no. 3–4. pp. 381–382. [online]. Available at: https://www.researchgate.net/publication/326335056_EU_Trade_Agreements_and_Human_Rights_From_Extraterritorial_to_Territorial_Obligations/fulltext/5bb7a22e92851c7fd2f1d7d/EU-Trade-Agreements-and-Human-Rights-From-Extraterritorial-to-Territorial-Obligations.pdf.

²⁰ GAMMAGE, C. A critique of the extraterritorial obligations of the EU in relation to human rights clauses and social norms in EU free trade agreements. *Europe and the World: A law review*. 2018, vol. 2, no. 1. p. 3. [online]. Available at: <https://www.scienceopen.com/document/read?vid=eb01108a-0187-4216-a45c-5fea4601d4d6>.

remains ambiguous. They are obliged to respect the fundamental rights guaranteed by the EU only if their activities are carried out within the scope of EU law, but it is not always clear when and whether Member States act within the scope of EU law in a particular situation. It is important to keep in mind that Member States are obliged to respect fundamental rights not only when implementing EU legal acts, but also when interpreting or applying domestic law that falls within the scope of EU law.

The conceptualisation of the extraterritoriality of human rights is a multifaceted and complex issue, characterised by ambiguity of vision and perception both in international law and in the EU legal order. The legal analysis of the conceptual approaches to understanding the extraterritoriality of human rights, the case law of CJEU, and the extraterritorial application of EU law in the internal legal orders of third countries available in the specialised literature gives rise to the following conclusion: the legal significance of extraterritorial effect as a separate manifestation of the application of EU law is the possibility of extending their effect in the areas within the competence of the EU beyond its borders, i.e., the Member States, to the territory of third countries, to individuals or legal entities under their jurisdiction, whose relations (behaviour/practices) have the necessary connection with the EU: were carried out within its borders or have/may have a significant actual impact on it, in particular on the EU internal market,²¹ fundamental rights (consumer protection, personal data protection, etc.) recognised, confirmed and guaranteed by the EU. This raises complex and still open-ended questions: is the EU obliged to protect the fundamental rights of the EU Charter beyond its own borders? And if so, when does this duty arise, and how far does it extend? The above only confirms the correctness of the conclusion of Samantha Velluti and Vasilis P. Tzevelekos that “‘extraterritoriality’ is a complex and multidimensional legal problem” and “a growing number of EU rules aim to produce legislative effects in third countries”,²² which highlights the importance of its study in various aspects and manifestations, taking into account the latest approaches to understanding fundamental rights and the development of the human rights protection system in the EU.

²¹ 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. 103.

²² VELLUTI, S., TZEVELEKOS, V. P. Extraterritoriality of EU law and human rights after Lisbon: the case of trade and public procurement. *Europe and the World: A law review*. 2018, vol. 2, no. 1, p. 9. [online]. Available at: <https://livrepository.liverpool.ac.uk/3027467/1/EWLR-2-2.pdf>.

3. Expansion of the EU Law Territorial Scope in Current Realities

In the context of the above, attention should be paid not only to the activities of the EU institutions, primarily the European Commission, in this area and its ability to take measures aimed at exercising extraterritorial jurisdiction, but also to the result of these activities, its significance and role as a deterrent to possible future violations. The extraterritorial effect of EU law is characterized, as Professor Victor Muravyov notes, “by a situation where the same behavior falls under two competing jurisdictions: on the one hand, this behavior is regulated by EU law, and on the other, by the domestic law of a third country. The extraterritorial effect of EU law in such cases may result in a negative impact on the functioning of economic relations in third countries and on relations between the EU and the latter”.²³ In addition, naturally, such an effect may be perceived negatively: “...EU unilateral climate measures with significant extraterritorial impacts generally pursue goals broadly shared by the international community, such measures have nonetheless often been vehemently opposed by third countries, lamenting a violation of their sovereignty”.²⁴ Therefore, with the development of economic relations between the EU and third countries, EU law may in certain cases apply to third countries, individuals or legal entities under their jurisdiction, since the activities of the latter affect or may affect, including negatively, the EU internal market²⁵, which affects the efficiency of the functioning of its legal order. The connection between the behavior that, *inter alia*, affects fundamental rights within the EU legal order and the extraterritoriality of EU law also needs to be understood, since the integration association explicitly guarantees a clearly defined scope of fundamental rights that constitute “*hard core*” of human rights.²⁶

²³ MURAVIOV, V. I. *Pravovi zasady rehuliuвання ekonomichnykh vidnosyn Yevropeiskoho Soiuzu z tretimy krainamy (teoriia i praktyka): monohr.* Kyiv: Akadem-Pres, 2002. p. 262. (in Ukrainian).

²⁴ ANTONIAZZI, C. T. Extraterritorial Human Rights Obligations in the Area of Climate Change: Why the European Union Should Take Them Seriously. *European Papers*. 2024, vol. 9, no. 2. p. 483. [online]. Available at: https://www.europeanpapers.eu/en/system/files/pdf_version/EP_eJ_2024_2_Chiera_Tea_Antoniazzi_00768.pdf.

²⁵ FALALIEIEVA, L. Ekstraterytorialna diia norm prava YeS: osoblyvosti teorii ta praktyky zastosuvannya. *Pamiati 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. p. 154. (in Ukrainian).

²⁶ See: HAMUL'ÁK, O. Is Charter of the Fundamental Rights of the EU Taking Social Rights Seriously? *European Studies – The Review of European Law, Economics and Politics*. 2015, vol. 2, pp. 18–19.

It is important to distinguish between *fundamental rights that impose positive obligations*, i.e., require ensuring observance of this category of rights, including preventing their violation by third parties, and *fundamental rights that impose negative obligations*, i.e., require addressees to refrain from unjustified violations of these rights.²⁷ The above is all the more significant because there is still no complete certainty about the possibility of extraterritorial application of the EU Charter, which does not distinguish between negative and positive obligations in terms of the scope of application. On the one hand, given the numerous substantive features of the EU Charter, the practice of its application may differ from the established approaches to the application of international human rights treaties, and on the other hand, by analogy with the extraterritorial application of international human rights treaties, it seems acceptable and justified to assert that, unlike positive obligations, negative obligations can be considered territorially unlimited.²⁸ A convincing example in this context is the EU's practice of imposing targeted sanctions against specific individuals outside its borders,²⁹ which demonstrates that the EU and its Member States have negative obligations under the EU Charter, including in the extraterritorial dimension. As for the positive obligations that are not singled out as such in the EU Charter, the enforcement of fundamental rights in terms of territorial coverage is carried out on a case-by-case basis.³⁰ It should also be noted that when it comes to sanction policy, one of manifestations of restrictions on free capital movement, which has extended in recent years with regard to Russia and countries providing military support to it,³¹ the EU has an approach stating that it couldn't force third countries to do the same, so in this regard sanctions are not extraterritorial.³² However, the 14th

²⁷ FALALIEIEVA, L. *Zakhyst osnovopolozhnykh prav u intehtatsiinomu pravoporiadku Yevropeiskoho Soiuzu: monohrafiia*. Kyiv, 2020. p. 201 (in Ukrainian).

²⁸ See: MILANOVIC, M. *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy*. Oxford: Oxford University Press, 2011, pp. 209–222.

²⁹ See: Council Decision (CFSP) 2024/3182 of 16 December 2024 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. OJ L, 2024/3182, 16. 12. 2024. [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202403182.

³⁰ FALALIEIEVA, L. *Zakhyst osnovopolozhnykh prav u intehtatsiinomu pravoporiadku Yevropeiskoho Soiuzu: monohrafiia*. Kyiv, 2020. p. 201 (in Ukrainian).

³¹ FALALIEIEVA, L., STRILETS, B. Capital Movement Restrictions in EU Law: Retrospective and Modern Approaches, Development Trends. *European Studies – The Review of European Law, Economics and Politics*. 2023, vol. 10, no. 1, p. 80. [online]. Available at: <https://sciendo.com/de/article/10.2478/eustu-2023-0003>.

³² Press and information team of the Delegation to UKRAINE. Some clarifications on the circumvention of EU sanctions against Russia. 22.05.2023 [online]. Available at: https://www.eeas.europa.eu/delegations/ukraine/some-clarifications-circumvention-eu-sanctions-against-russia_en?s=232.

package of sanctions against Russia associated with its unprovoked full-scale military aggression against Ukraine seems to show a lessened non-extraterritoriality approach. For example, EU-based companies will have to undertake “best efforts” to ensure that their subsidiaries in third countries don’t take part in any activities undermining EU sanctions.³³ Such rules as well as so-called “secondary sanctions”, which may imply, for example, freezing assets of third country-based companies, are “in contrast with the principles of EU sanctions design”.³⁴ Presumably, this might be a sign of some “indirect extraterritoriality”, when foreign subjects are influenced by EU law regulations through actions carried out by EU-based companies.

Undoubtedly, “in today’s globalized world, the legal systems of states are subject to constant mutual influence.”³⁵ The extraterritorial effect of EU law in the context of globalization of the world economy is particularly important, on the one hand, being an important factor in its development, and, on the other hand, causing many problems in practical application. Globalization processes are accompanied by the intensification of economic factors and interconnections, the mutual influence of legal systems of states, and the emergence of new conceptual structures, but at the same time, conflicts of jurisdiction arise with third countries, especially in the field of economic relations, where each state is trying to assert the greatest possible influence. For example, the United States uses the extraterritorial application of national competition law, corporate relations, etc. as a tool to spread its influence on global economic processes, sometimes without limiting the excessive spread and unjustified exercise of extraterritorial jurisdiction.³⁶ As Serhiy Peremot appropriately emphasizes, the most expansive models of the exercise of extraterritorial jurisdiction do indeed allow to achieve the maximum level of protection of the national interests of the regulatory state due to the relatively wide spread of its jurisdiction, almost inevitably causing jurisdictional conflicts between the regulatory state and the state with territorial

³³ Questions and Answers on the 14th package of restrictive measures against Russia. Brussels. Jun 24, 2024. [online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/qanda_24_3425.

³⁴ LONARDO, L. Challenging EU Sanctions against Russia: The Role of the Court, Judicial Protection, and Common Foreign and Security Policy. *Cambridge Yearbook of European Legal Studies*. 2023, p. 14. [online]. Available at: https://www.researchgate.net/publication/376704817_Challenging_EU_Sanctions_against_Russia_The_Role_of_the_Court_Judicial_Protection_and_Common_Foreign_and_Security_Policy.

³⁵ PTUKHA, S. S. Ekstraterytorialna diia prava Yevropeiskoho Soiuzu. *Entsyklopediia mizhnarodnoho prava: u 3 t. / redkol.: Yu. S. Shemshuchenko, V. N. Denysov (spivholovy) ta in.; In-terzhavy i prava im. V. M. Koretskoho NAN Ukrainy*. Kyiv: Akademperiodyka, 2017. T. 2: E–L. p. 47. (in Ukrainian)

³⁶ FALALIEIEVA, L. Zakhyst osnovopolozhnykh prav u intehtratsiinomu pravoporiadku Yevropeiskoho Soiuzu: monohrafiia. Kyiv, 2020. p. 202 (in Ukrainian).

jurisdiction over the relevant case.³⁷ These dynamics highlight the urgent need for improved coordination and dialogue at the international level. The legitimacy of extraterritorial jurisdiction shall be continuously assessed against the principles of proportionality, respect for state sovereignty, and sovereign equality of states.

4. External Dimension of EU Activities and Human Rights Impact Assessment

The widespread practice of unilateral and overly broad exercise of extraterritorial jurisdiction encouraged the Council of the EU to adopting Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom.³⁸ In this way, the EU protected itself from these practices. The preamble to this regulation states that it refers to cases where a third country has enacted certain laws, regulations, and other legislative instruments which purport to regulate activities of natural and legal persons under the jurisdiction of the Member State (para. 6) and emphasises that, if applied extraterritorially, such legal acts violate international law and impede the achievement of the objectives set out in this Regulation (para. 7). In addition, it is stated that such laws, regulations and other legal instruments, as well as actions based on them or arising from them, affect or may affect the established legal order and have adverse effects on the interests of the EU and the interests of natural persons/legal entities exercising the rights (para. 8)³⁹ guaranteed by the EU. On 21 December 2021, the CJEU issued a significant ruling in the *Bank Melli Iran* case (C-124/20), clarifying the scope and application of the Regulation (EC) No 2271/96. In particular, it was ruled that the prohibition for EU residents to comply with any foreign requirement or prohibition as established by this regulation applies “...even in the absence of an order directing compliance issued by the administrative or judicial authorities of the third countries which adopted those laws”.⁴⁰

³⁷ PEREMOT, S. Ekstraterytorialne zastosuвання konkurentnoho prava YeS: vynyknennia ta rozvytok yurysdyktsiinoi modeli. *Ukrainskyi shchorichnyk mizhnarodnoho prava*. 2009. Kyiv: Vyd-vo «Feniks», 2014. p. 352 (in Ukrainian).

³⁸ Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom. *Official Journal of the European Communities*. L 309. Vol. 39. 29 November 1996. [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:1996:309:FULL&from=EN>.

³⁹ Ibid.

⁴⁰ Case C-124/20. Judgment of the Court (Grand Chamber) of 21 December 2021. *Bank Melli Iran v Telekom Deutschland GmbH*. [online]. Available at: <https://curia.europa.eu/juris/document/do>

Judicial authorities of states that have association relations with the EU have the possibility to apply to the CJEU for a preliminary ruling to obtain an interpretation of the provisions of primary and/or secondary EU law (in this case the author is referring to the Article 107 of Agreement on the European Economic Area), which means that the CJEU's jurisdiction is extended to relations outside the EU,⁴¹ thus expanding the territorial scope of EU law. We should note that this possibility is not usually resorted to. As early as the end of the last century it was initiated to incorporate the "human dimension" into the EU's external relations, its treaty practice. Since then, the European Commission has decided to introduce a standard provision in the EU's treaty practice: the inclusion of a requirement to respect and observe democratic principles and human rights in EU international agreements with third countries, which are identified as essential elements, necessary provisions for concluding international agreements. Criticizing the EU's extraterritorial obligations regarding human rights and social standards in its free trade agreements, Clair Gammage recognizes that the essential elements clause is more robust than the "soft incentive-based" approach.⁴² As a rule, such provisions are accompanied by a rule that in case of violation, either of the contracting parties may take appropriate measures, including suspension or termination of the agreements.

With the entry into force of the Lisbon Treaty on December 1, 2009, such safeguards became fundamental in the external dimension of the EU's activities, encouraging the Council of the EU to adopt on May 19, 2014, the Conclusions on a human rights-based approach to development cooperation that encompasses all human rights. At the same time, the European Commission is obliged to conduct a preliminary human rights impact assessment of an international agreement during the negotiation process. "The most certain way of doing so efficiently is to carry out a human rights impact assessment in the preparation phase..."⁴³ of the international agreement, *before* it is concluded, not after it enters into force (§24 of European Ombudsman's Decision in case 1409/2014/MHZ on the European Commission's failure to carry out a prior human rights impact assessment of the EU-Vietnam free trade agreement).

The European Ombudsman rightly recognizes that "...the human rights impact assessment is not a collection of data or a response to public opposition,

cument.jsf?text=&docid=251507&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1240123.

⁴¹ MURAVIOV, V. I. Ekstraterytorialna diia prava Yevropeiskoho Soiuzu u pravoporiadkakh tretikh krain i uhody pro asotsiatsiiu. *Aktualni problemy mizhnarodnykh vidnosyn.* Zb. nauk. prats. 2013. Vyp. 117 (Chastyna I). p. 65. (in Ukrainian).

⁴² GAMMAGE, C. Op. cit. p. 19.

⁴³ European Ombudsman, Decision in case 1409/2014/MHZ on the European Commission's failure to carry out a prior human rights impact assessment of the EU-Vietnam free trade agreement. 26 February 2016. [online]. Available at: <https://www.ombudsman.europa.eu/en/decision/en/64308>.

but rather an analytical tool for demonstrating that all necessary factors and circumstances have been taken into account in framing a policy. The human rights impact assessment tool identifies the sources of risks and the human rights impacts...”⁴⁴ in areas related to the relevant international agreement at each stage of its implementation. The role of this instrument is primarily preventive, since, having identified negative impacts, it is necessary either to amend the agreed provisions or to take a decision on mitigating measures before concluding an international agreement (§ 25).⁴⁵ From a practical point of view, Professor Cedric Ryngaert believes that the EU should carry out a preliminary human rights impact assessment, i.e. during the preparation of an international agreement, and preferably also *ex-post*, at the stage of its implementation.⁴⁶ Obviously, “*ex-post* human rights impact assessment” (§ 18)⁴⁷ is also inherent in the practice of the European Commission, ensuring the positive impact of the relevant international agreement on human rights and allowing to eliminate/mitigate negative impacts. However, of course, *ex-post* impact assessment cannot replace the tool of preliminary human rights impact assessment, since the latter has both predictive value and is aimed at preventing/eliminating negative human rights consequences.

The obligation to carry out a human rights impact assessment correlates with the obligation to exercise due diligence, which is the need to study, in some cases, to comprehensively review, taking into account the human rights situation in the territory of the contracting state and fully and impartially establishing the potential impact of a particular international agreement on human rights in the territory of that state to ensure that the EU’s actions, in particular the conclusion of this agreement, will not lead to human rights violations outside the EU and will not have a negative impact on the benefits of the EU. The peculiarity, as compared to the obligation to carry out a human rights impact assessment, is that the concept/standard of due diligence is linked to the existence of specific concerns about the human rights situation in the territory of the contracting state, i.e. there must be appropriate grounds for such a review. Obviously, this is a procedural obligation of the EU, the failure to comply with which can be qualified as a *clear error of judgment*, which could potentially lead to the annulment of the relevant international agreement. Emphasizing the

⁴⁴ European Ombudsman, Decision in case 1409/2014/MHZ on the European Commission’s failure to carry out a prior human rights impact assessment of the EU-Vietnam free trade agreement. 26 February 2016. [online]. Available at: <https://www.ombudsman.europa.eu/en/decision/en/64308>.

⁴⁵ Ibid.

⁴⁶ RYNGAERT, C. Op. cit. pp. 392–393.

⁴⁷ European Ombudsman, Decision in case 1409/2014/MHZ on the European Commission’s failure to carry out a prior human rights impact assessment of the EU-Vietnam free trade agreement. 26 February 2016. [online]. Available at: <https://www.ombudsman.europa.eu/en/decision/en/64308>.

overly abstract level of this approach, Sandra Hummelbrunner concludes: “as a consequence, the Union would still be ‘unilaterally’ impose its human rights standards on the other State”,⁴⁸ although the author recognizes that there are good reasons justifying due diligence,⁴⁹ the idea of which is to encourage third countries to comply with their human rights obligations, and the EU’s desire to ensure compliance⁵⁰ by the state concerned.

Monitoring a partner country’s compliance with human rights provisions enshrined in an EU international agreement is one of the manifestations of the EU’s conditionality policy. The latter is one of the tools introduced under the European Neighborhood Policy as one of the areas of external activity of the integration association aimed at creating conditions for security, stability and prosperity in the neighborhood based on common values, principles of in-depth cooperation and long-term nature of relations. It is about the interconnectedness of political conditions, legal requirements, economic incentives, as well as the importance of their attractiveness, flexibility of approaches, effectiveness of coercive instruments and optimisation of existing incentives to ensure efficiency.

Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part 2014 (hereinafter referred to as the EU-Ukraine Association Agreement 2014) is no exception in this sense, as it also contains a clause that provides for the possibility of applying appropriate measures, if the other party fails to fulfill its obligations under it. In this regard, the essential elements of the EU-Ukraine Association Agreement 2014 are noteworthy, which include respect for democratic principles, human rights and fundamental freedoms, respect for the rule of law, which should form the basis of the internal and external policies of the Contracting Parties (Article 2).⁵¹ Thus, the scope of application of these provisions may potentially fall under the extraterritorial effect of EU law.

⁴⁸ HUMMELBRUNNER, S. Op. cit. p. 45.

⁴⁹ Ibid. p. 47.

⁵⁰ Ibid. p. 46.

⁵¹ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part. *Official Journal of the European Union*. L 161. Vol. 57. 29 May 2014. [online]. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529\(01\)&qid=1580481775906&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529(01)&qid=1580481775906&from=EN).

5. EU External Action Priorities and the Concept of Extraterritorial Obligations

Human rights have been consistently asserted as the basis of the EU's relations with other subjects of international law, with third countries, including EU candidate countries. Reflecting on the extraterritorial application of human rights and the limits of the EU's competence, scholars, including Lorand Bartels and Clair Gammage, share the general conclusion that human rights do not fall within the area of exclusive EU competence,⁵² of course, this is confirmed by practice. At the same time, Samantha Velluti and Vasilis P. Tzevelekos note that “the EU does not have a general competence in the field of human rights, that is, conferred competence within the meaning of Article 5(1) and (2) TEU”⁵³ as amended by the Lisbon Treaty 2007, but it has the relevant obligations to protect fundamental rights, freedoms and, in certain cases, the principles set out in the EU Charter. It is noteworthy that in the EU founding treaties, shared competence is designated by this term, which is used in Article 4 of the Treaty on the Functioning of the European Union⁵⁴ (hereinafter referred to as TFEU), which reveals the content of the EU's common competence with the Member States,⁵⁵ in accordance with the principle of conferred competence, which the Member States have implemented in the founding treaties to achieve the goals they set.

According to Article 21(2)(b) TEU as amended by the Lisbon Treaty of 2007, one of the objectives of the EU's external action is to “consolidate and support democracy, the rule of law, human rights and the principles of international law”,⁵⁶ and Article 3(5) of this Treaty states that in its international relations the EU shall promote “... the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international

⁵² BARTELS, L. Op. cit. p. 1079; GAMMAGE, C. Op. cit. p. 19.

⁵³ VELLUTI, S., TZEVELEKOS, V. P. Extraterritoriality of EU law and human rights after Lisbon: the case of trade and public procurement. *Europe and the World: A law review*. 2018. vol. 2, no. 1. p. 5. [online]. Available at: <https://livrepository.liverpool.ac.uk/3027467/1/EWLR-2-2.pdf>.

⁵⁴ 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>.

⁵⁵ See: Division of competences within the European Union. [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aai0020>.

⁵⁶ 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>.

law, including respect for the principles of the United Nations Charter”.⁵⁷ In general, the EU’s external action is guided by the values and principles underlying its foundation, development and enlargement, which it seeks to promote: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law (Article 21(1) TEU). In this context, it is worth noting the doctrinal view that, given the linguistic construction, Article 3(5) and Article 21(1) TEU serve to limit the EU’s external activities towards third countries, and Article 21(3) TEU is “normatively stronger” than Article 3(5), since the former also refers to “the external aspects of its (*EU’s – authors’ note*) other policies”.⁵⁸ Thus, Article 21 and Article 3(5) TEU refer to human rights as belonging to the principles of the integration association’s external action, which gave grounds to see it as a global fighter for human rights, which was strengthened by *the EU Strategic Frameworks and action plans on human rights and democracy*,⁵⁹ adopted to implement the Strategic Framework in order to ensure a flexible response to changing realities and new challenges.

The Strategic Framework encourages a universal approach to human rights, as well as respect for human rights, democracy and the rule of law,⁶⁰ which are the basis for all aspects of the EU’s internal and external policies. It is also emphasised that a democratic society is based on human rights and the rule of law,⁶¹ i.e., attention is focused on the interconnectedness of the above-mentioned EU’s fundamental values and principles. The Council of the EU also stressed the role of the Joint Communication of the European Commission and EU High Representative for Foreign Affairs and Security Policy “Human Rights and democracy at the heart of EU external action – Towards a more effective approach”, which assesses the impact of the policy today and proposes further steps towards the realization of these goals through external action.⁶² Equally

⁵⁷ Ibid.

⁵⁸ See: GAMMAGE, C. Op. cit. p. 4.

⁵⁹ EU Action Plan on Human Rights and Democracy 2020-2027. 2020 (extended in 2024). [online]. Available at: https://www.eeas.europa.eu/sites/default/files/documents/2024/Action-Plan-EN_2020-2027.pdf.

⁶⁰ See: ŠIŠKOVÁ, N. European Union’s Legal Instruments to Strengthen the Rule of Law, their Actual Reflections and Future Prospects. *The European Union – What is Next? A Legal Analysis and the Political Visions on the Future of the Union*: Collective monograph / ed. by Naděžda Šišková. Köln: Wolters Kluwer Deutschland, 2018. pp. 136-162.

⁶¹ Council of the European Union, Document 11855/12, 25 June 2012. Human Rights and Democracy: EU Strategic Framework and EU Action Plan. p. 3. [online]. Available at: <https://data.consilium.europa.eu/doc/document/ST-11855-2012-INIT/en/pdf>.

⁶² Ibid. p. 4.

important is the provision that stipulates the joint responsibility of the EU and its Member States for promoting human rights and democracy beyond their borders,⁶³ integrating the promotion of human rights and trade, investment, technology, telecommunications, the Internet, energy, environment, corporate social responsibility, development policy, the Common Security and Defense Policy, external dimensions of employment, social policy, the area of freedom, security and justice, including anti-terrorism policy.⁶⁴ To this end, the EU is stepping up its efforts in all areas of external action, improving its capacities and mechanisms for early prevention of crises that could lead to human rights violations. In its development cooperation, the *human rights-based approach* will be used to ensure that the EU's efforts to assist partner countries are intensified, thus contributing to the implementation of their international human rights obligations.⁶⁵ The above emphasizes the importance of strengthening the EU's cooperation with partner countries, including candidate countries, as well as civil society, international organizations, including the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE), the African Union, the Association of Southeast Asian Nations (ASEAN), the Organization of American States, the League of Arab States, the Organization of Islamic Cooperation, and the Pacific Islands Forum, in order to encourage the consolidation of regional human rights mechanisms.⁶⁶ It should also be borne in mind that the EU systematically develops partnerships with the United Nations, guided in its activities, *inter alia*, by the document called Taking the UN-EU Strategic Partnership on Peace Operations and Crisis Management to the Next Level: Priorities 2022-2024.⁶⁷ It is noteworthy that the EU Delegation to New York has an extended observer status at the UN, representing the common positions of the Member States.

The doctrine also actively develops flexible approaches related to the EU's vision of the role of a global champion of human rights.⁶⁸ After all, human rights are not only an important component of achieving balance, but a fundamental

⁶³ Ibid.

⁶⁴ Ibid. p. 5.

⁶⁵ Ibid.

⁶⁶ Ibid. p. 8.

⁶⁷ Taking the UN-EU Strategic Partnership on Peace Operations and Crisis Management to the Next Level: Priorities 2022–2024. Council of the European Union. 2021. [online]. Available at: <https://www.coe-civ.eu/kh/taking-the-un-eu-strategic-partnership-on-peace-operations-and-crisis-is-management-to-the-next-level-priorities-2022–2024>.

⁶⁸ HUMMELBRUNNER, S. Op. cit. P. 8; SZEPELAK K. Judicial Extraterritorial Application of the EU Charter of Fundamental Rights and EU Trade Relations – Where Do We Stand Today? *EU Trade Agreements and the Duty to Respect Human Rights Abroad* / Eva Kassoti and Ramses A. Wessel (eds.). *CLEER Papers*. 2020. No. 1. p. 37. [online]. Available at: https://www.asser.nl/media/679745/cleer020-01_web_final.pdf.

basis, the core of coherence of the EU's external activities, ensuring compliance with common values and fundamental principles, among which respect for human rights occupies a prominent place. Obviously, Professor Enzo Cannizzaro notes, the EU's aspirations as a global champion of human rights are limited by the narrow scope of the principle of conferred powers.⁶⁹ The founding treaties emphasize that the EU "shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties" (Article 3(6) TEU), and that "the Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers" (Article 7 TFEU).⁷⁰ Thus, compliance with the principle of coherence in the EU's external action is important if the question of whether its human rights obligations can/have extraterritorial application is to be answered in the affirmative. As Professor Cedric Ryngaert argues, a simple competence-based standard prevails: in exercising its powers, the EU has human rights obligations to persons affected by bad governance, regardless of their location.⁷¹ At the same time, the European Ombudsman points out that "...good administration means, in the first place, observance of and respect for fundamental rights. In fact, where fundamental rights are not respected, there cannot be good administration. Accordingly, EU institutions and bodies must always consider the compliance of their actions with fundamental rights and the possible impact of their actions on fundamental rights. This applies also with respect to administrative activities in the context of international treaty negotiations. The EU Administration should not only ensure that the envisaged agreements comply with existing human rights obligations, and do not lower the existing standards of human rights protection, but should also aim at furthering the cause of human rights in the partner countries." (§ 10).⁷² Finally, in the external dimension, in its external activities, the EU is obliged to respect human rights as provided for in the above-mentioned provisions of the founding treaties, generally recognized principles and norms of international law, *inter alia*, customary international law.

Obviously, the EU's extraterritorial human rights obligations are primarily derived from the EU Charter as the up-to-date catalog containing a systematic list of confirmed fundamental rights guaranteed by the Union. The EU Charter

⁶⁹ CANNIZZARO, E. Op. cit. p. 1099.

⁷⁰ 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>.

⁷¹ RYNGAERT, C. Op. cit. p. 380.

⁷² European Ombudsman, Decision in case 1409/2014/MHZ on the European Commission's failure to carry out a prior human rights impact assessment of the EU-Vietnam free trade agreement. 26 February 2016. [online]. Available at: <https://www.ombudsman.europa.eu/en/decision/en/64308>.

is explicitly silent on territorial application and jurisdiction, which may create opportunities for expanding its geographical coverage.⁷³ In fact, Professor Cedric Ryngaert recognizes that Article 51 of the EU Charter explicitly deals with the scope of application, but it is covered in a functional rather than territorial manner,⁷⁴ since the provisions of the Charter “are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law” (Article 51(1)).⁷⁵ Of course, a competent determination of the geographical scope of the EU Charter is extremely important,⁷⁶ but the CJEU in its case law has not yet given an unambiguous answer regarding its possible extraterritorial application. Thus, when it comes to issues like this one, “timing and a sense of realism” do matter here.⁷⁷

In the *Front Polisario* case, the General Court applied the provisions of the EU Charter to the Sahrawi people of Western Sahara in the context of the Council of the EU decision on the liberalization agreement, without explicitly stating that the EU Charter gives rise to extraterritorial obligations. It recognized violations of the fundamental rights guaranteed by the EU Charter, in particular: human dignity (Article 1), right to life (Art. 2), right to the integrity of the person (Article 3), prohibition of slavery and forced labor (Art. 5), freedom to choose an occupation and right to engage in work (Article 15), freedom to conduct a business (Article 16), right to property (Art. 17), fair and just working conditions (Art. 31), prohibition of child labour and protection of young people at work (Art. 32) (§ 228).⁷⁸ In addition, the General Court held that when concluding an agreement with a third country, the Council of the EU must take into account the impact of

⁷³ RYNGAERT, C. Op. cit. p. 379.

⁷⁴ Ibid.

⁷⁵ Charter of Fundamental Rights of the European Union. *Official Journal of the European Union*. C 202/02. 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>.

⁷⁶ For the CJEU’s legal positions on these issues, see: Case C-104/16 P Council of the European Union v. Front populaire pour la libération de la sagaia-et-hamra et du rio de oro (Front Polisario) (Judgment of the Court (Grand Chamber) of 21 December 2016). ECLI:EU:C:2016:973. [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62016CJ0104_SUM.

⁷⁷ SCHNEEMELCHER, P., HAAS, J. Rules enforcement in the EU: “conditionality” to the rescue? *Bertelsmann Stiftung Policy Paper*. 28.05.2019. p. 11. [online]. Available at: https://www.delorscentre.eu/fileadmin/user_upload/20190528_Konditionalitaet-und-MFR_Schneemelcher_Haas1-2.pdf.

⁷⁸ Case T-512/12 Front populaire pour la libération de la sagaia-et-hamra et du rio de oro (Front Polisario) v. Council of the European Union (Judgment of the General Court (Eighth Chamber) of 10 December 2015). ECLI:EU:T:2015:953. [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=ecli:ECLI:EU:T:2015:953>.

the agreement on the implementation of fundamental rights in that state (§228).⁷⁹ In other words, the Council in particular and the EU institutions in general have extraterritorial obligations under the EU Charter, which apply on a purely causal basis.⁸⁰ The decision of the General Court was set aside by the Court of Justice, which limits its precedential value.⁸¹ Sharing this conclusion, Sandra Hummelbrunner emphasizes that the precedential nature of the General Court's decision is somewhat limited, however, since the Court has never considered such cases on the merits, but only reversed the decision of the General Court, many questions regarding the application of the EU Charter or the provisions of EU law in general in its external activities, in situations of its negative consequences for human rights in third countries, still remain open,⁸² attracting the attention of scholars and practitioners.

Exploring the EU's extraterritorial human rights obligations in its foreign trade and investment policy, Dr. Antal Berkes points out that "...the EU has an obligation under its own 'constitutional law', customary international law and its human rights treaty obligations to assess and prevent foreseeable human rights violations in third countries as a consequence of its domestic policies. Therefore the EU has to integrate risk assessment in its trade and investment policies..."⁸³ Professor Enzo Cannizzaro, recognizing the principle of territoriality as having stood the test of time, notes that in the field of human rights, there is a paradigm shift from the concept of territoriality to the functional concept. In addition, according to the scholar, one should not limit oneself to the geographical or functional sphere, but rather restrictive extraterritoriality is an ideal paradigm for the vexed question of extraterritorial application of human rights.⁸⁴ The scholar summarizes: separation of the concept of jurisdiction from its original understanding based on the principle of territoriality is especially appropriate in the field of human rights. If the scope of the state's powers is not determined by the territorial test, then the same test should determine the scope of its obligations to respect human rights.⁸⁵ This view is shared by Professor Cedric Ryngaert, who emphasizes that the distinction between people based only on the status of a particular territory is contrary to the universal application of human rights.⁸⁶ At

⁷⁹ Ibid.

⁸⁰ RYNGAERT, C. Op. cit. p. 381.

⁸¹ Ibid.

⁸² HUMMELBRUNNER, S. Op. cit. pp. 10–11.

⁸³ 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, no. 1. p. 16. [online]. Available at: <https://bura.brunel.ac.uk/bitstream/2438/19661/1/FullText.pdf>.

⁸⁴ CANNIZZARO, E. Op. cit. pp. 1093–1094.

⁸⁵ Ibid. p. 1095.

⁸⁶ RYNGAERT, C. Op. cit. p. 392.

the same time, the latter form the basis of the EU's functioning in the internal and external dimensions of its activities. Ensuring synergy between different areas of the EU's external activities will prevent fragmentation in ensuring the observance and protection of human rights.

6. Conclusions

The above crystallises the need for harmonisation of legal regulation and convergence of its application in the field of human rights. In this regard, the following is of great importance: compliance with universally recognised basic principles and norms of international law, primarily *jus cogens* norms of general international law, the content of which corresponds to *erga omnes* obligations, as well as common values and fundamental principles of the EU law; taking into account the peculiarities of the human rights protection system in the EU, the role of institutions in the development of jurisdictional practice of extraterritorial application of EU law in the context of expanding international cooperation and deepening international economic integration; evolution of the approaches used to protect human rights, especially their *hard core* – fundamental rights recognised by the Lisbon Treaty of 2007, confirmed by the EU Charter, and thus guaranteed at the level of primary EU law.

Human rights are consistently affirmed as a *hard core* of the EU's relations with other subjects of international law, with all third countries, including the EU candidate countries. At the same time, human rights are not only an important component of achieving balance, but also a fundamental basis for the coherence of the EU's external activities, adherence to common values and fundamental principles, among which respect for human rights is at the forefront. Ensuring the synergy of different areas of the EU's external activities will obviously prevent fragmentation in ensuring the observance and protection of human rights.

The legal analysis of the available in the special literature conceptual approaches to understanding the extraterritoriality of human rights, extraterritorial application of EU law in the internal legal order of third countries, and the CJEU's case law, gives grounds to conclude that the legal significance of extraterritorial action as a separate manifestation of the application of EU law rules is the possibility of extending their effect in areas within the competence of the EU beyond its borders, i.e., the Member States, to the territory of third countries, to individuals or legal entities under their jurisdiction, whose relations (behaviour/practices) have the necessary connection with the EU: have been carried out within its borders or have/may have a significant actual impact on it, in particular on the EU internal market, fundamental rights (regarding consumer protection,

personal data protection, etc.) are recognised, confirmed and guaranteed by the EU. The foregoing demonstrates the multifaceted nature of the outlined issues, the complexity of conceptualizing the extraterritoriality of human rights, and the ambiguity of the vision and perception of the latter both in international law and in the EU legal order.

The understanding of respect for human rights as a *hard core* of common values and human rights standards has provided grounds for distinguishing *internal (at different levels of the EU)* and *external (in relation to third countries)* dimensions of ensuring its observance in EU practice. The external dimension is aimed primarily at involving third countries in European integration processes on the basis of common values and civilizational achievements, which are thus directly or indirectly disseminated by the EU within various forms and models of regional cooperation, including the renewed European Neighborhood Policy. The respect for human rights is a sustainable fundamental part of the modern concept of human rights, an important component of the concept of fundamental rights and common values that form the core of EU human rights standards, and ensuring respect for them is one of the essential elements of international EU agreements, including the EU-Ukraine Association Agreement 2014.

As a global champion of justice, the EU seems to be changing its approach to the extraterritorial nature of sanctions policy. While earlier the integration association objected to the extraterritorial character of financial sanctions, the latest packages against Russia showed the opposite trend, because primary and direct measures were not enough to achieve the desired effect, so there is an opinion that the EU referred to the so-called secondary sanctions with a more explicit extraterritoriality. Despite the fact that sanctions are one of the manifestations of restrictions on the movement of capital, their existence is necessary in the current conditions of violation of the international legal order by the aggressor state.

The conclusion of the EU-Ukraine Association Agreement 2014 initiated the newest generation of basic agreements with the countries of the Eastern Partnership, a new institutional and legal mechanism of bilateral special relations based on common values that permeate all components of the EU-Ukraine Association Agreement 2014, constituting its most essential element, and also ensured the improvement of the existing and introduction of new dimensions of integration interaction, certifying the increase in the degree of legal integration and determining the mechanisms for its achievement. The effectiveness of the fulfillment of the EU-Ukraine Association Agreement 2014 and ensuring respect for human rights will obviously depend on how effectively Ukraine, as a candidate country for accession to the EU, will carry out systemic internal transformations and use all available instruments, all mechanisms of cooperation with the EU that influence the development of European integration processes. The above has

a practical value for deepening the political association and strengthening the economic integration, increasing the efficiency and speeding up the result-oriented practical cooperation of Ukraine with the EU on the basis of the essential elements of the Ukraine-EU Association Agreement 2014 on ensuring respect for the common values and fundamental principles that should form the basis of the domestic and foreign policy of Ukraine and the EU. Such practices of integrative cooperation are particularly important for the state that acquired candidate status during the legal regime of martial law, while opposing the Russian Federation as an aggressor state.

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