



Relationship between the Charter of Fundamental Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and national provisions on human rights

relationships of legal systems in terms of
protection of human rights

- **open system** – rules of another system (provisions, procedures and competencies of authorities and institutions) belong to it if the system allows it.

The parallel application of norms from various systems does not have to lead to a conflict, but to their coexistence.

3 systems: international, supranational and national

the rights of an EU citizen are co-formed by ECHR, the EU law and the constitutions of member states

symmetrical relations between systems,
i.e. each of them protects against violation
and each one applies universally,
while legal acts in force in one system
cause effects in another system

probability of a collision of systems

CJ judgement of 22.06.2012 (Landtova),
ECRH judgement of 30.06.2005
(Bosphorus)

CJ judgement of 3.09.2008 (Yassim)

and the CJ judgement in the case Friedrich
Kremzow v Austria of 29.05.1997 (situations not
covered by the enforcement of the EU law) and
the **decision** of CJ of 12.11.2010 (Krasimir
Asparuhov Estor)

open systems and the possibility of parallel application of norms, e.g. when a national measure compliant with ECHR violates the constitution or when ECHR rules are violated through literal application of a EU deed

- the universality of each of the systems does not imply its completeness, which is why it is necessary to determine the level of protection and mutual relationships between systems, which – in the case of an open system – allows for subsidiary application of norms from another system

(perhaps the application of the two-step effectiveness test stipulated in Article 5(3) of the TEU could be useful)

- application of norms governing the conflict of laws, whenever every system leads to obtaining different results:

Article 53 ECHR and Article 53 CFR

- a norm governing the conflict of constitutional law

(a given legal system does not have the power to set models of public authority that has not been established by this system)

The effects of the EU's joining ECHR

- EU obligations under international law cannot lead to violation or limitation of rights guaranteed by the EU law in the scope of application of the European law
- the binding power of the Charter for the member states does not waive the binding power of ECHR with respect to such states

The effects of the EU's joining ECHR

1. institutional effects

Protocol 14 to the ECHR (1.06.2010)

in the context of the “overrepresentation” of judges in the Court and the EU representation in the Committee of Ministers from the perspective of the guarantee of the equality of Convention parties

The effects of the EU's joining ECHR

2. effects in the EU legal systems

internal control of the community law
and a threat to the autonomy of the
system:

The scope of binding power of ECHR judgements

Article 46(1) of the Convention which determines the binding power of judgements provides that “*The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.*”

The scope of binding power of ECHR judgements

Judgements of international authorities **do not cause** direct effects in the area of national law and, consequently, a legal regulation questioned by a Court judgement is not waived automatically. In consequence, the Court judgements do not have the cassation effect in the internal law, yet, due to the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, they are a source of Poland's obligation under international law

The scope of binding power of ECHR judgements

One example of an obligation of this type is the agreement in the case ***Broniowski v. Poland*** concluded on 6 September 2005:

the content of the agreement is available at www.ms.gov.pl, section Council of Europe and the European Court of Human Rights

The scope of binding power of ECHR judgements

In this agreement the government recognized its responsibility for providing the persons from the eastern side of the Bug river (Zabużanie) a measure to pursue injunction to remedy material and moral damages suffered as a result of improper functioning of acts applying to them (ustawy zabużańskie), and, consequently, undertook **not to question before national courts** that Article 448 in conjunction with Article 23 of the Civil Code may be used as a legal basis to pursue remedy for moral damages. The government noted that with respect to material damages the relevant legal measure to pursue remedy for damage is Article 417 of the Civil Code, or, if possible, such measure is Article 417(1) of the Civil Code.

The scope of binding power of ECHR judgements

The binding effect of the Court judgements in criminal cases is stipulated by Article 540(3) of the Code of Penal Procedure, pursuant to which court proceedings ended with a final judgement are resumed if the necessity to do so results from a judgement of an international authority acting on the basis of an international agreement ratified by the Republic of Poland.

The scope of binding power of ECHR judgements

Therefore, if the Court resolves that a final judgement of a Polish court issued in penal proceedings violates the Convention, this **will be the basis to resume the proceedings** ended with a final judgement, because pursuant to Article 91(1) of the Constitution of the Republic of Poland a ratified international agreement, once announced in the Journal of Laws of the Republic of Poland, belongs to the national legal system and is directly applicable.

The scope of binding power of ECHR judgements

The doctrine provides that the judgements of the Convention authorities are effective only with respect to entities participating in a dispute.

Therefore, the Court's judgements do not refer as a rule either to analogous past cases or to future cases. Moreover, one may come across an opinion that reliance on the discussed basis of resumption of the proceedings in an application for resumption submitted by another accused party (i.e. the one who was not a subject of proceedings before Strasburg authorities) will be effective.

Kodeks postępowania karnego. Komentarz [*Code of Penal Procedure. Commentary*]
Z. Gostyński, J. Bratoszewski, L. Gardocki, S.M. Przyjemski, R.A. Stefański, S. Zabłocki, Vol. II, Article 540, Dom Wydawniczy ABC, 1998.

The scope of binding power of ECHR judgements

Therefore, Article 46(1) of the Convention is an exception from the rule of judiciary independence of the court stipulated by Article 8 of the Code of Penal Procedure.

The scope of binding power of ECHR judgements

The Code of Civil Procedure does not include an analogous solution to the one found in penal proceedings.

The Court's judgements are in general of declarative nature and the interested States are to select measures which should be used in the national law to ensure that the State meets its obligation under Article 46 of the Convention (ECHR of 12 May 2005 in the case ***Ocalan v. Turkey***).

Case of Ocalan v. Turkey, available at <http://www.echr.coe.int/echr>

The scope of binding power of ECHR judgements

In the case ***Lyons v. the United Kingdom*** The Court found that the judgement declaring the violation of the Convention or Protocols to it imposing on the sued State a legal obligation to implement individual measures which should be adopted in national legal systems so as to discontinue the violation found by the Court and remedy the effects of the violation as far as possible (Court decision of 8.07.2003).

Case of Lyons v. UK, available at <http://www.echr.coe.int/echr>

The scope of binding power of ECHR judgements

In the case ***Belilos v. Switzerland*** the Court found that the Convention does not make it competent to order a sued state to amend a court judgement as a result of which the provisions of the Convention were violated (Court judgement of 29 April 1998).

Case of *Belilos v. Switzerland* available at <http://www.echr.coe.int/echr>

The scope of binding power of ECHR judgements

A state should aim at meeting its international obligations itself.

There is no provision binding the courts adjudicating in civil cases by judgements issued by international courts. The Court's judgement will not apply *erga omnes*, but it should result in an analysis of circumstances which resulted in an analysis of the circumstances which were the basis for issuing the judgement.

In the case ***Woś v. Poland***

The effects of the EU's joining ECHR

no cassation effect
for a ECHR judgement
means that the
human rights protection system
does not threaten the autonomy
of the EU legal system

The effects of the EU's joining ECHR

2. effects in the EU legal system

- division of liability for a violation between a member state and the EU and the “*co – respondent mechanism*”
- protection also by third party intervention

The effects of the EU's joining ECHR

2. effects in the EU legal system

acceptability of a complaint to ECHR

(“the use of a national measure” – “*prior involvement*”, i.e. *the assessment of compliance*)

The effects of the EU's joining ECHR

2. effects in the EU legal system

the EU is bound only by those additional protocols to the Convention that all member states are bound by

The effects of the EU's joining ECHR

3. political effects

harmonisation of the case law and
collaboration (expected)

4. Article 33 of the ECHR and Article 344 TFEU

Legal measures of protecting fundamental rights after the EU's joining ECHR

- the exclusive competence of the CJ to examine the validity of an EU deed applied e.g. in the procedure to issue a preliminary ruling or under Article 263(4) TFEU
- complaint to the European Commission as a tool initiating the control of the member state's compliance with an obligation under treaty (Article 258 TFEU)

- national measures

CJ judgement of 19.11.1991 (Andrea Francovich)

THANK YOU FOR YOUR ATTENTION