Development of the human rights concept in the European Council conclusions 1975 – 2025

*Leon Marc**

ABSTRACT

The purpose of this paper is to analyse the incidence of the term »human rights« (HR) in the conclusions of the European Council (EC) in the period 1975 – 2025, and to link this incidence with the evolution of the concept of HR in Europe during this period. To that end, we shall first describe the emergence of HR in the political discourse in post-war Europe. This will be followed by summarizing the incidence of the concept of HR in EU Treaties and selected key EU documents, and then complemented by (quite lengthy) textual analysis of the European Council conclusions in the above period. We will then discuss the links between incidence of the term HR and the introduction and evolution of this concept in post-war liberal democracy in Europe. In the final part we will draw some conclusions on whether the development of the concept of HR in post-war Europe has left any mark on the EC conclusions, also as a part of wider context of development of liberal democracy. We will end with some thoughts on how this influence may feature in the future, with some parallels to the introduction of the HR to Europe in the immediate aftermath of the WWII. Progressive development of HR in the EU has – as e.g. social and health policies remain a national competence – been seen in docu-

* Doctoral student in International and Diplomatic Studies, Faculty of Government and European Studies, New University, Ljubljana.

ments dealing with third countries, thus projecting outwards a HR vision that is not necessarily and/or entirely shared by the Member States of the Union.

Keywords: human rights (HR), European Union (EU), European Council (EC), liberalism, liberal democracy, European Convention on Human Rights (ECHR)

Razvoj koncepta človekovih pravic v zaključkih Evropskega sveta, 1975 – 2025

POVZETEK

Namen tega članka je analiza pojavnosti izraza „človekove pravice“ (ČP) v sklepih Evropskega sveta (ES) v obdobju 1975–2025 in to pojavnost povezati z razvojem koncepta ČP v Evropi v tem obdobju. V ta namen bomo najprej opisali pojav ČP v političnem diskurzu v povojni Evropi. Sledil bo povzetek pojavljanja koncepta ČP v pogodbah EU in izbranih ključnih dokumentih EU, nato pa bomo to dopolnili s (precej dolgo) besedilno analizo sklepov Evropskega sveta v omenjenem obdobju. Nato bomo obravnavali povezave med pojavljanjem izraza ČP ter uvedbo in razvojem tega koncepta v povojni liberalni demokraciji v Evropi. V zadnjem delu bomo podali nekaj zaključkov o tem, ali je razvoj koncepta ČP v povojni Evropi pustil kakršen koli pečat na sklepih ES, tudi kot del širšega konteksta razvoja liberalne demokracije. Zaključili bomo z nekaj mislimi o tem, kako bi se ta vpliv lahko odražal v prihodnosti, z nekaj vzporednicami z uvedbo ČP v Evropi takoj po drugi svetovni vojni. Progresivni razvoj človekovih pravic v EU se – ob tem, da npr. socialna in zdravstvena politika ostajata v nacionalni pristojnosti – kaže v dokumentih, ki se nanašajo na tretje države, s čimer se navzven prikazuje vizija človekovih pravic, ki ni nujno oz. v celoti skupna državam članicam Unije.

Ključne besede: človekove pravice (ČP), Evropska unija (EU), Evropski svet (ES), liberalizem, liberalna demokracija, Evropska konvencija o človekovih pravicah

1. Introduction

The EU is often portrayed as "human rights champion". The purpose of this paper is to trace the evolution of this high status of the EU in the HR field through the conclusion of the European Council. These have been chosen since the European Council signify regular, periodical and collective voice of the Union and has been "the source of all the major decisions the Union has taken" (Council of the European Union, European Council Conclusions, e-source). We undergo a quantitative analysis of the incidence of the term "human rights", followed by a contents analysis in political and historical context. We proceed as follows. We first briefly describe some general theory of human rights. We then present the way HR were introduced in post-war Europe and the relevant political context. In the following section we give an overview of HR in EU Treaties and selected key EU documents, after which we proceed to the analysis of the European Council conclusions. We conclude by discussion and some conclusions with regards to the imprint of the HR concept development on the European Council conclusions in the wider context of the development of liberal democracy in post-war Europe.

2. The theory of human rights

According to United Nations, »[h]uman rights are commonly understood as being those rights which are inherent to the human being." The UN Handbook explains that HR "are legally guaranteed by human rights law, [...] expressed in treaties, customary international law, bodies of principles and other sources of law«, placing obligations on States. The

authors emphasize that »the law does not establish human rights. Human rights are inherent entitlements which come to every person as a consequence of being human.« Human rights are universal, inalienable, indivisible, interrelated and interdependent (Office of the High Commissioner for Human Rights, 2007, p. 2-3).

To Donnelly, HR "are literally the rights that one has because one is human." HR "ultimately rest on a social decision to act as if such 'things' existed." They are, however, not arbitrary nor only conventional, but their justifications "appeal to 'foundations' that ultimately are a matter of agreement or assumption rather than proof" (Donnelly, 2013, pp. 7, 22). For him, HR "have no single philosophical or religious foundation", but at the same time "most leading comprehensive doctrines now see human rights as the political expression of their deepest values" (ibid., pp. 58-61). It is the human dignity that in view of Donnelly provides the foundation for HR and on that he proposes to look at human dignity as "an intermediate concept that links human rights to 'comprehensive doctrines'." Those that do not want to look for such foundations they could still look at human dignity "as an axiom or Ur-principle." But the alleged ambiguity of the term "human dignity" does not arise from foundations themselves, but from the fact that "for different people human dignity points to different deeper foundations." Despite these differences these different foundations "provide a bridge between the body of international human rights law and most of the leading comprehensive doctrines of the contemporary world" (ibid., pp. 131-132).

Freeman writes that it "is not clear, why one has any rights simply because one is a human being." In the absence of more transcendent basis, even the concept of human dignity is vague. There seems to be a lack of justification on (international) human rights, since such justification would require "some conception of human nature." So the Universal Declaration of Human rights "is often taken to be an

approximately correct list of human rights." Therefore the concept of human rights "is socially constructed" and a "liberal concept", which is "rooted in the liberal tradition that values freedom over equality, and the individual over the collective" (Freeman, 2022, pp. 69-91, 148).

There are different theories about the reasons for international human rights regimes to come into existence. Moravcsik proposes the so-called "institutional liberal view", according to which democracies work out of "self-interested reason, namely to combat future domestic political uncertainty." For this reason, the most vocal advocates of HR regimes are not the most robust democracies, but rather the weak ones, "because such commitments help lock in democratic governance against non-democratic opposition." The key motive is the "reduction of political uncertainty" (Moravcsik, 1998, pp. 1-11).

There are two conceptual ways of talking about rights: fundamental and human rights. As Palombella explains, we owe human rights to human beings, while fundamental rights are related to the society. Human rights have "essentially *moral* status", while fundamental rights are a concern of ethics (Palombella, 2006, pp. 3-6).

A similar distinction is maintained also by the European Union: »Within the European Union (EU), the term 'fundamental rights' is used to express the concept of 'human rights'. These rights which are fundamental to individuals living in the EU, are laid down in the EU's Charter of Fundamental Rights. [...] The EU uses the term 'human rights' to refer to such rights beyond its borders, such as in the context of its external relations or development cooperation policies« (Human Rights, European Union, e-source). In contrast to fundamental rights, "[t]he term 'human rights' is generally used in international law and refers to rights pertaining to all humans irrespective of their nationality, race, caste, creed, gender, etc." (Fundamental Rights, European Union, e-source).

From the theoretical point of view it is also appropriate to mention contestations of the concept of human rights. Among contemporary post-liberal critiques we mention three. Vermeule advocates a human rights model "without progressivism", with rights "ordered to the common good and that common good is itself the highest individual interest." He emphasizes "boundaries or limits" of rights (Vermeule, 2022, pp. 130-167). In a similar way, Pabst is not satisfied with the concept of "individual rights disconnected from mutual obligations". In his view, rights can only be upheld in parallel to respect of social virtues like "fraternity, duty, loyalty, humility and honour" (Pabst, 2021, pp. 4-21). An even more radical criticism is provided by De Benoist, who sees human rights as a hegemonic ideology, with "sacred" and also "dogmatic" character and as "a sort of potential truth that cannot be verified". He is critical of the contemporary tendency which "consists in converting all sorts of demands, desires or interests into 'rights'" and in that context talks about "banalization of rights" and their devaluation. De Benoist believes that liberal conception of human rights "deprives a man of his social dimensions" (De Benoist, 2011, pp. 22-23, 84-86, 103-108).

3. Introduction of the concept of HR in post-war Europe

In tracing the introduction of the term »HR« in the political discourse in post-war Europe, Duranti draws attention to Roosevelt's State of the Union address to the US Congress in January 1941 (Duranti, 2017, p. 94). In that speech, the US President spoke of »Four Freedoms«: freedom of expression, religious freedom, freedom from want (economic freedom), and freedom from fear. Roosevelt concluded his address by stating that »freedom means the supremacy of human rights everywhere.« Duranti remarks that the term HR »had appeared sporadically in political addresses over the past

century and a half in the English-speaking world«, but that the 1941 Roosevelt's was the first referral to *universal* HR.[1]

Less universal was the European approach to HR. Duranti notes that »romantic Europeanists framed their HR initiatives in such a manner that colonial subjects and communists would not be entitled to equal protection as they were not considered to belong to the historical community of European peoples who honoured the ethical inheritance of the West« (ibid., p. 9). He stresses that the introduction of the term was closely linked with the efforts of post-war European governments to prevent a return of fascism or communism, even at the costs of what amounted to discrimination on party political basis.

Nevertheless, the European Convention on Human Rights of 1950 – adopted, as Duranti observes, only a few months before the signing of the European Coal and Steel Community – »was the first binding human rights accord concluded after the Second World War, and the first treaty in history to have the words »human rights« in its title« (ibid., p. 198).[2]

There was another European particularity: at the forefront of HR movement were not in the first place »liberal cosmopolitanism and technocratic internationalism« as in the United States, but rather conservativism, above all French and, surprisingly and contrary to standard narrative, British (ibid., p. 345). In the continent, »human rights system was conceived by movements for European unity, transnational organisations that operated independently of governments.

[1] Google Books Ngram Viewer for HR shows a slow but steady increase of the use of the term HR in 1930s, accelerated in 1940s, followed by a resolute rise from 1970s on.

[2] The ECHR was, of course, preceded by the UN Universal Declaration of Human Rights of 1948. For an account of the making of the latter see Fawcett, 2018, pp. 287-299. Fawcett underlines that the issue of this Declaration was »a moment when liberal democracy was recognised as a global, not a narrowly Western, aspiration.« Yet the same author adds that scholars from different cultural background in 1948 failed to agree on what exactly were the foundations of human rights. At the same time, the Declaration »encouraged the spread of entitlement claims into ever wider areas. Soon virtually any political issue became possible as a matter of rights.« He is critical also of the later developments with the ECHR, saying that the deliberations at the European Court of Human Rights turned »on formal and procedural infractions that their government perpetrator might not even be aware of.«

For conservatives in their ranks, new supranational mechanisms were indeed required to protect the »West« against communism and fascism« (ibid., p. 3). To them, »the construction of a united Europe was a means of containing nationalist forces on both Left and Right. This required transposing the motifs of liberal and romantic nationalism to a European key« (ibid., pp. 349-350).

Here the HR came into the picture: »What made the conservative Europeanism of the late 1940s novel was the addition of an element long associated with the liberal tradition: human rights. [...] These principles were not posed as recent liberal innovations, but rather as part of Europe's Christian and humanist heritage. [...] HR offered a vocabulary ideally suited to such a reinvention of European traditions. Understood as at once universal and distinctly European, human rights could be invoked as Europe's unique inheritance as well as its greatest gift to the world« (ibid., p. 350).

European conservatives of the time were afraid of both election success of socialists in the West and of the communist take-over in Central and Eastern Europe: »The reference to the Prague coup highlighted its importance in persuading members of the European unity movements that new supranational guarantees of human rights were needed to guard the subversion of democracy from within« (ibid., p. 168).

In other words: »A diverse array of conservatives at once found themselves scrambling for a common moral vocabulary, capable of shoring up confidence in the traditional socio-political order. They feared that left-wing majorities might extinguish basic freedoms in the name of anti-fascism and social justice. Perceived to be most at risk were the liberties of business owners, church schools, landholders, conservative opposition newspapers, and right-wing political prisoners« (ibid., p. 347). As for the latter, conservatives' aim was also to put »an end to denazification [...] in the name of promoting reconciliation«, also because in their view, »the

Left had taken advantage of postwar purges to disenfranchise and silence political rivals« (ibid., p. 8).

As such, conservatives saw in the HR system an opportunity to »halt the advance of socialism, reconstitute the ethical basis of liberal capitalism, and restore elements of an older social order. This project was, in the context of the immediate postwar period, as profoundly conservative as it was revolutionary« (ibid., p. 391). This is how Duranti makes a case for the title of his book (The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention), adding that even »the European Court of Human Rights, must be understood as a product of its free-market and social conservative origins« (ibid.).

Duranti also shows how the efforts of the movements for the European unity (at least of their conservative strand), in making use of the tool of HR, focused on what led to creation of the Council of Europe (CoE) and the European Court of Human Rights (ECtHR), rather than on the embryonic forms of what was to become European Communities (and later European Union). We shall return to this aspect in the next section.

The conservatives "saw in the construction of European judiciary a means of overcoming opposition at home to a number of hotly contested conservative policies" (ibid., p. 3). Furthermore, »[c]onservatives enshrined human rights as European values in the service of a nostalgic Christian vision of the European legal order, not a liberal cosmopolitan one.« (Ibid.) The central aim of these conservatives was to ensure that »the right to property and the right of parents over the religious content of their children's education would be codified in treaty law« (ibid., p. 5). Moreover, »[t]hey were united in their belief that a democracy in which tyranny of the majority held sway was little better than a dictatorship.« (ibid.) Socialism was believed to be the »breeding ground« of totalitarianism, »but so, too, were certain aspects of liberalism

and republicanism to blame. With domestic courts having proven themselves unable or unwilling to uphold the rule of law against overweening executives, in their eyes, a new international solution was needed« (ibid.).

While the strengthening of the role of the State was one of the general characteristic of the efforts of post-war European governments, the conservatives nevertheless »reasoned that the ever-expanding state bureaucracies in their countries, once placed at the disposal of socialist governments backed by left-wing parliamentary majorities, posed a threat to their human rights« (ibid., p. 7). In fact, Duranti concludes that the European HR system, as created in 1940s and 1950s largely by conservatives, »has spurred majority-rule parliamentary democracies to transition into more pluralistic systems in which the principle of the rule of law trumps the principles of parliamentary supremacy and popular sovereignty« (ibid., p. 340). This, in Duranti's view, also set up an early foundation for what later became the European Court of Human Rights doctrines of margin of appreciation, dynamic interpretation, and principle of subsidiarity (ibid., p. 341).

The conservatives hoped for an international court with authority »that mirrored that of the medieval Church [...] constructed from the wreckage of a lost Christian civilisation« (ibid., p. 8). The movements of European unity worked under assumption »that the various Christian faiths of Europe were sufficiently compatible with the humanist tradition and with each other to constitute a coherent cultural community« (ibid., p. 296).

The way HR were introduced by conservatives had another consequence – that of a geopolitical and/or value-based demarcation. As Duranti notes, while neither the United Nations, nor the NATO charter and not even the Rome Statute of the International Criminal Court made membership conditional on the respect for HR, the Council of Europe made such requirement obligatory (ibid., pp. 165-166). Furthermore, not even the EU until 1990s »included such categorical

and enforceable HR criteria« (ibid., p. 166). Duranti points out that »[t]he 1951 Treaty of Paris and 1957 Treaty of Rome that launched the European Communities elided the words 'democracy' and 'HR' altogether« (ibid.). It was not until the Maastricht Treaty to see HR »once again inscribed in a statute of a European organisation of states« (ibid., p. 209). Williams puts this bluntly, saying that the idea »that human rights were fundamental in the EU's *creation* [italics by Williams] is a myth« (Williams, 2010, p. 110).

It was the Council of Europe, which, on the other hand, used the concept of HR »to demarcate the boundaries of European organisation of states long before 1980s, when the European Communities invoked human rights to justify the admission of former dictatorships and the denial of membership to Turkey« (Duranti, 2017, p. 166). In other words, »[t]he coupling of European integration with a human rights treaty legitimized the creation of non-communist bloc during a delicate moment of transition in European international relations« (ibid., p. 9). Thus Duranti concludes that »[t]he »Europe of human rights« preceded the »Europe of the market« and was central to its legitimation« (ibid., p. 166).

In fact,

> »conservatives in the postwar movements for European unity made culture and ethics central to their transnational advocacy. For them, the unification of Western Europe was in fact an act of *re*unification [italics by Duranti], a resurrection of the Christian humanist credo common to the region's people before their spiritual unity collapsed under the crushing weight of modernity. At the heart of postwar conservative Europeanism was the advancement of *European* [italics by Duranti] HR, understood not as universal entitlements, but rather as the distinctive birthright of those living within the borders of what remained of Christendom« (ibid., p. 209).

Thus HR were made »markers of transnational European identity« (Ibid.). The conservatives' »articulation of European unification as a human rights project permitted them to safely recycle their old call to arms against the Soviets in defence of Western Christian European civilization« (ibid., p. 211).

Contrary to established wisdom, »[t]he most famed protagonist of this conservative human rights revolution was Winston Churchill.[...] The anti-fascists credentials of these men helped distance the cause of European unity from its association with Axis propaganda, as did the participation of numerous individuals who had participated in the continental Resistance« (ibid., p. 4). Churchill's crucial role, according to Duranti, took place at a time when »most of those continental statesmen later anointed the 'Founding Fathers of the European Union' – including Konrad Adenauer, Alcide de Gasperi, Jean Monnet, and Robert Schuman – had yet to take the centre stage.« A number of French Christian personalists and social conservatives were also very important (ibid.).

Despite this central role of European conservatives, Duranti underlines that »[t]he Left had for much of the past century been at the forefront of championing civil liberties, ending discriminatory measures against women and minorities, expanding suffrage, and securing economic and social rights. At the United Nations, socialists made a significant contribution to the drafting of the Universal Declaration, a successor to the revolutionary rights texts of the modern era« (ibid., p. 5). However, »proposals for the creation of a European human rights court attracted the disproportionate support of conservatives and disproportionate opposition of socialists. Socialists also tended to be less enthusiastic about European integration than their conservative counterparts« (ibid., p. 7).

It was therefore the Council of Europe (and the European Court of Human Rights) which flew the banner of HR, not the (nascent) European Union in its embryonic state. In the latter:

> »The Four freedoms of Franklin Roosevelt [...] were replaced by Four Freedoms of the European Communities – the free movement of goods, capital, services, and persons. When the advancement of human rights and democracy did begin to embed itself in the political objectives of the European Communities alongside the advancement of peace and reconciliation, it did so according to the ECHR model.[...] The European Union political legitimacy since 1990s has been ever more premised on its promotion of democracy and human rights« (ibid., p. 359).

Thus the European HR system was not only a legacy of liberal internationalism, but in greater part of »an older Christian romantic internationalism« (Ibid.), despite the fact that this bridging »with astonishing speed« of a divide which hitherto existed between conservativism and HR has been largely forgotten in the history of HR (ibid., pp. 384-387).

One other Duranti's thought relevant for our discussion is that »Western Europeans diverged mightily in their understandings of what the expression »human rights« and its various permutations signified, including within the political family of conservativism« (ibid., p. 389). He adds that »[a]ppeals to democracy and human rights continue to divide as much as to unite Europeans« (ibid., p. 408). We shall return to the issue of HR as a contested subject in the conclusions.

Along very much the same lines, Demir-Gürsel also concludes that the conceptualization of HR in post-war Europe, as seen through the establishment of the Council of Europe (CoE), »involved a strong emphasize on the need to protect Europe against fascism and communism by means of an international human rights treaty« (Demir-Gürsel, 2021, p. 114). Thus the »preservation of European democracies was therefore perceived necessary for the preservation of peace and security in Europe, as well as the domestic stability of the member states« (Ibid.). Demir-Gürsel quotes Moravcsik arguing that there were the newly established (or re-estab-

lished) democracies after the WWII who were more willing to bind themselves with an international HR treaty, rather than long-established European democracies, thus supplementing – but not substituting – domestic democratic institutions (ibid., p. 115). Their interest was in »further stabilizing the domestic political status quo against non-democratic threats« (Moravcsik, 2000, p. 220). His thesis is that

> »a country is most likely to support a human rights regime when its government is firmly committed to democratic governance but faces strong internal challenges that may threaten it in the future. Its willingness to tolerate *sovereignty costs* [italics by Moravcsik] increases insofar as the costs are outweighed by the benefits of reducing *domestic political uncertainty costs* [italics by Moravcsik]« (ibid., p. 228).

In a similar way, Demir-Gürsel also argues, quoting Hannah Arendt, that the conclusion of the European Convention on HR (ECHR) was equally important for the preservation of sovereignty of European countries, namely that countries were able to present their sovereignty only insofar as other countries were prepared to make their own sovereignty less than absolute (Demir-Gürsel, 2021, p. 117). Or, in other words, European countries were ready to sacrifice a degree of their sovereignty and delegate it to Council of Europe and the Court for the sake of peace and security. The European unity is thus linked to preservation of sovereignty and its submission to constraining this sovereignty »around the discourse of human rights, rule of law and democracy« (ibid., p. 118). This is in line with Moravcsik noting that international HR regimes are also a challenge »to liberal ideas of direct democratic legitimacy and self-determination« (Moravcsik, 2000, p. 218).

Furthermore, »governments turn to international enforcement when an international commitment effectively enforces the policy preferences of a particular government at a particular point in time against future domestic political al-

ternatives« (ibid., p. 220). According to this logic, the newly established democracies had the biggest interest in committing themselves to such international HR regimes.(Ibid.) To further advance his argument, Moravcsik, with regards to the UN Covenant on Civil and Political Rights, points out that in »early 1950's, the most stable among modern democracies, including the United States and the United Kingdom, allied with authoritarian and totalitarian states like the Soviet Union, China, South Africa, and Iran, in opposition to the inclusion of compulsory, enforceable commitments« (ibid., p. 244). Similar was the case during the negotiations on the Rome Statute on the International Criminal Court (ibid., p. 245). By the same token, the first three countries to ratify the Protocol 11 of the ECHR were transitional democracies – Bulgaria, Slovakia and Slovenia (ibid., p. 245).

Demir-Gürsel further states that »the rights proposed to be included in the ECHR were limited to those seen as 'essential for a democratic way of life'« and ads that the list »conveyed the values underpinning liberal democracies« (Demir-Gürsel, 2021, p. 120) – the latter itself would merit a further elaboration on its meaning. She links this list with European identity and notes that – in contrast to attempts of the United Nations – »the CoE was allegedly built on a common tradition and heritage of human rights, rule of law and democracy« (ibid., p. 121). Part of this tradition was the rejection of »totalitarianism«, which in the drafting process of the ECHR comprised Communism, Fascism and »Hitlerism« (ibid., p. 123). This created the group of »like-minded« countries, that is, of signatories of the ECHR being in favour of democracy, human rights and rule of law, in contrast with non-signatories, thus delineating »the frontiers of a future European organization« (ibid., p. 124, quotation is from Duranti). By doing this, »European states attempted to mark their difference not only from their 'others', but also from the recent past of Europe itself.« It was an attempt to return to the past before the World War II (ibid, p. 125).

In 2000, von Bogdandy asked himself whether the European Union was becoming or will become a HR organisation. He concluded that »[t]he Common Market is exhausted as a vision of further integration, neither does it provide an indication where European integration should go from here.« But he cautioned against such a move, saying that »[t]here are good arguments against proliferation of human rights and human rights discourse in ever more legal fields, policy areas and spheres of society, and particularly so if this originates in the Union's legal order.« In fact, he argued that »[t]he Union as an organization focused on progressive human rights policy would easily endanger the European constitutional set-up between the Union and the Member States without any real need for protecting human rights, at least as they are traditionally understood.« He associates such approach with European federalists. Instead, von Bogdandy suggests to develop »three different human rights standards«: one, basic, for third countries; the second for monitoring Member States under Article 7 TEU, and the third, more elaborated, for the actions of the EU (von Bogdandy, 2000, p. 1337). He further concludes that »[h]uman rights, though important, should not be understood as the *raison d'être* of the Union« (ibid., p. 1338).

Observing this development, Besson found »growing evidence that the European Union (EU) is becoming more and more involved in human rights protection and has the capacity to turn into an unprecedented post-national HR protection institution« (Besson, 2006, p. 323). Its institutional design is said to be conducive to such a role, despite the fact that the EU »started primarily as a functional and economic institution« (ibid.). In fact, Besson believes that it is the HR that could provide the EU with a new vision, since »economic integration is to a large extent exhausted as a vision for further integration in the European Union (EU)« (ibid., p. 324). She mentions year 2000 as a milestone for the rise of the importance of HR as »element of institutional activity

and constitutional construction in Europe,« reinforced by the adoption of the EU Fundamental Rights Charter (Ibid.). According to the same author, enlargement has further identified threats to HR and thus contributed to the emphasis on HR. She proposes some reforms that should improve the capacity of the EU to become a HR organisation (ibid., p. 324).

Douglas-Scott more than a decade after von Bogdandy apparently shared the same view, saying that »[t]he EU cannot be constructed as a human rights organisation merely on the back of dimensions of human rights protection necessary to ensure economic integration.« She uses the same argument, saying that this would »invite opposition in some of its Member States to say the very least, as well as disturbing the division of competences between the EU and its Member States« (Douglas-Scott, 2011, pp. 679-680). She concludes that in »the EU model, economic freedoms are still at the very centre of the EU, and still dominate EU citizenship« (Ibid.). Therefore, given the limited scope of the Charter, »the national courts will continue to reaffirm their own role in policing the observance of fundamental rights in the EU« (ibid., p. 681). She also warns that »an increase of fundamental rights monitoring and activities through the EU law would be seen as highly undesirable by some, as it might be seen as limiting state autonomy, as well as lacking in democratic legitimacy« (ibid., p. 682).

Fabbrini talks about the »European multilevel system for the protection of fundamental rights«. However, in his view this »pluralist structure represents a significant departure from the constitutional tradition of the European states where rights used to be protected by a single institution (either Parliament or the Supreme Court).« He then concludes that all these »have not produced a uniform conception of fundamental rights across Europe« and »significant differences remain in the understanding and scope of fundamental rights« (Fabbrini, 2012, pp. 9-17).

Williams believes that »complication for the EU [...] re-

volves around the degree to which its institutions assume responsibility akin to that possessed by a state« (Williams, 2010, p. 111). He also points to the distinction between fundamental rights (used internally in the EU) and human rights (used externally), saying that the distinction is unclear (ibid., p. 113). He wonders what »respect« for HR in Article 6 TEU actually means and writes about »an ethical struggle, a central tension lying at the heart of human rights in the EU's institutional ethos« (ibid., pp. 112-114.), the tension being »between [EU] deepening its human rights work and keeping it within the parameters of the EU law« (ibid., p. 116). He asserts the subject of HR in EU »remains contentious« (ibid., p. 117). He gives the issue of minority rights as an interesting example, with »little evidence prior to the end of the Cold War that the EU was the focus for articulating let alone realising rights in this regard« (ibid., p. 121). The same goes for collective minority rights, whereby »little has occurred in the EU's history prior to the Yugoslavian conflict to suggest a willingness to promote minority rights per se« (ibid., p. 127). Moreover, the EU is keen to promote (collective) minority rights externally, »but internally is reluctant to even discuss them in such a fashion« (ibid., p. 131).[3] Thus within the EU, »[i]ndividuals are the holders of rights within the EU legal order, not groups or peoples« (ibid., p. 132). In Williams' view, this speaks volumes about »a human rights model that is preconditionally focused on the preservation of the *institution* [italics by Williams] rather than the attainment of any other form of justice« (ibid., p. 151).

Avbelj summarizes the development of HR policies in the EU in five stages: inscription of HR into national constitutions; European Court of Justice (ECJ or CJEU) creating its own HR standards ex nihilo; extension of the scope of application of HR; HR in the new treaties and institutions in the area of HR; the idea of the EU acceding to the ECHR.

[3] In line with this was the European Commission proposal for a so-called Minority Safepack in 2021. See Makszimov, 2021.

He notes that in views of some critics "[t]he human rights protection was thus introduced to save the principles of primacy and autonomy of the EU law from the attacks of national courts." According to the same critics, HR were "put forward as a source of legitimacy of the Union's institutions and as a catalyst for the European identity of EU citizens" in relation to the alleged democratic deficit of the EU. Avbelj himself talks about "self-perpetuating human rights rhetoric", becoming almost an "ideology" (Avbelj, 2018, pp. 9-15.).

Avbelj is also sceptical about the idea of EU accession to the ECHR, arguing that it would be largely symbolic but would not improve access of individuals to what is an already an overburdened ECtHR. He is of opinion that subsidiarity is much more important and that "the role of the national court is crucial", although the volume of cases at the ECtHR demonstrates that the national courts are not guardians of HR to a satisfactory degree (ibid., pp. 16-18). He is also critical that the dense HR system in the EU may in some instances result in unavailability of remedies due to issues of competence (ibid., pp. 18-19). Finally, the democratic backslide in Hungary and (at the time of writing his text) in Poland is to Avbelj a proof that the strong emphasize on HR in the EU was not able to prevent HR violations in these two countries (ibid., pp. 20-22). The author thus calls for a "more balanced approach, following which the quality of human rights protection in practice should be preferred to the quantity of human rights protection" (ibid., p. 22). He suggests that the EU should strive for "fewer human rights regimes, fewer human rights instruments or at least a different and much more precise division of labour among them" (Ibid.). At the same time, "more should be invested into preventive mechanisms" and "the culture of rights" should permeate the executive or administrative branch of government (ibid., 2018, p. 22).

Let us now look at how these developments and the ways of thinking about HR in the EU can be traced in the EU Treaties and other EU documents.

4. HR in the EU Treaties and selected key EU documents

As we have seen so far, HR were therefore introduced in post-war European political landscape chiefly through the establishment of the Council of Europe and the European Court of Human Rights. They are nowhere to be seen in the other great European project of the time – that of the building of what later became the European Union. References to HR were also omitted in 1957 EEC and Euratom Treaties.[4]

De Burca notes that this »silence of the founding treaties in the 1950's« in the EU on HR (De Burca, 2011, p. 649) is usually explained (as we saw above) with the argument that »the HR concerns were unrelated to the project of economic integration being undertaken, or that the task of human rights protection was left instead to the Council of Europe's European Convention on HR« (ibid., p. 650). However, De Burca challenges this belief and draws the attention to the (abandoned[5]) draft European Political Community (EPC) Treaty of 1953 and references to HR in that document. De Burca identifies »the brief but intense period in 1951 – 1954 when the question of HR protection was prominent on the agenda of the European integration process« and writes about two important drafting exercises (ibid., p. 652), namely (i) the work of the *Comité d'études pour la constitution européenne* (CECE) on HR and (ii) the work of the Ad Hoc Assembly and its Constitutional Committee in drafting the EPC Treaty; he describes the two processes in some detail.

De Burca concludes that this omission of HR at the very birth of European integration can be better explained as »a

[4] Nevertheless, it is interesting to see how the Commission, in a publication in 1989, saw this history. While acknowledging that the Treaty of Rome and Paris do not mention explicitly HR, the Commission draws attention to references to »improving living standards and abolishing discrimination on grounds of nationality between citizens of Member States«, as well as on »bestowing new rights« such as »freedom of workers to move and establish«, or the right to vote in local elections. See: Commission of the European Communities, 1989.

[5] For more on the history of the European Political Community see European Political Community, CVCE, e-source.

pragmatic and strategic interim step« rather than as a consignment of the HR matters to the Council of Europe (ibid., p. 697). This pragmatism was apparently due to the failure of the EPC and European Defence Community Treaty[6]. The founding fathers did not want to repeat the non-success with the new initiative of the European Economic Community and therefore decided to avoid any subjects, which were not expressly mentioned at the so-called Messina conference, where the foreign ministers of six founding states met in June 1955 (ibid., p. 667).[7] Some attempts by Germany to introduce language on HR were rejected, largely »because of the perceived risk of member state abuse of such a clause« (ibid., p. 668). While from then on, the European integration project and the project of the Council of Europe took their own separate ways, there was »no indication that the looser monitoring and coordination mechanisms of the Council of Europe were seen as a substitute for some of the possible functions of the Communities, even in the field of HR« (ibid., p. 668). The two organisations cooperated, »but the question of the European Community's own engagement with human rights [...] continued to be raised at regular intervals throughout the early years and decades of the Communities' existence« (ibid., p. 669).

De Burca gives an account of how several cases (initiated mostly by German litigants, some about trade with coal) against the Commission with the European Court for Justice (ECJ) in late 1960's and early 1970's changed the reluctance of the European institutions – including the ECJ – to acknowledge HR as part of the foundations of the nascent European Economic Community. Thus »respect for fundamental rights – inspired by the common constitutional traditions of the Member States and international

[6] For more on the history of the European Defence Community Treaty see European Defense Community, CVCE, e-source.
[7] For more details on Messina conference, including resolution adopted by the six ministers, see The Messina Conference (1 to 3 June 1955), CVCE, e-source.

human rights treaties on which they collaborated – was declared to be part of the general principles of Community law, and the Court would henceforth entertain claims that such rights had been adversely affected by Community acts and policies« (ibid., p. 670). The reason for such a change of way of thinking is, according to De Burca, to be found in the Court's ambition to protect the »autonomy and supremacy of EC law« (ibid.). Thus »the period of silence of the EC constitutional framework from 1957 until 1969, and the formal legal vacuum on the subject of HR came to an end« (ibid., p. 671). De Burca notes that this was happening in the period of global oil crisis, while the EEC was »becoming increasingly preoccupied with its external role and with the perception of the European Communities in the world« (ibid.). Furthermore, this was the period of the 1973 enlargement with the UK, Ireland and Denmark and the beginnings of the EEC common foreign policy, followed by the Declaration on European Identity of 1973 (ibid.). The Declaration says that:

> »The Nine wish to ensure that the cherished values of their legal, political and moral order are respected, and to preserve the rich variety of their national cultures. Sharing as they do the same attitudes to life, based on a determination to build a society which measures up to the needs of the individual, they are determined to defend the principles of representative democracy, of the rule of law, of social justice — which is the ultimate goal of economic progress — and of respect for human rights. All of these are fundamental elements of the European Identity.« (Bulletin of the European Communities, 1973).

Thus the respect for HR is stated among the values of the European Communities and as an element of European identity. A couple of years later, the so-called Declaration on Democracy (agreed in Copenhagen in April 1978) states that:

»The creation of the Communities, which is the foundation of the ever closer union among the peoples of Europe called for in the Treaty of Rome, marked the determination of their founders to strengthen protection of peace freedom. The Heads of State or of Government confirm their will, as expressed in the Copenhagen Declaration on the European identity, to ensure that the cherished values of their legal, political and moral order are respected and to safeguard the principles of representative democracy, of the rule of law, of social justice and of respect for human rights. The application of these principles implies a political system of pluralist democracy which guarantees both the free expression of opinions within the constitutional organization of powers and the procedures necessary for the protection of human rights. The Heads of State or of Government associate themselves with the Joint Declaration by the European Parliament, the Council and the Commission whereby these Institutions expressed their determination to respect fundamental rights in pursuing the aims of the Communities. They solemnly declare that respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership of the European Communities« (Council of the European Union, 1978).

We see HR mentioned no less than three times in this short text, plus one mentioning of fundamental rights[8]. The Declaration also makes reference to the 1977 Joint Declaration by the European Parliament, the Council and the Commission (European Union, 1977), where the European leaders "stress the prime importance they attach to the protection of fundamental rights, as derived in particular from the constitutions of the Member States and the European Convention for the

[8] It is not quite clear when and why the leap from »human rights« to »fundamental rights« occurred.

Protection of Human Rights and Fundamental Freedoms." Crucially, the Joint Declaration states that »the Court of Justice has recognized, that law comprises, over and above the rules embodied in the treaties and secondary Community legislation, the general principles of law and in particular the fundamental rights, principles and rights on which the constitutional law of the Member States is based.« De Burca comments that this marked an expansion of the CJEU addressing HR and also a start of various legal and political initiatives for engagement of the European Communities with the issue of HR, but that it was not until early 1990s »that the first distinct contours of a European Union constitutional framework for HR protection began to emerge« (De Burca, 2011, p. 672). Formal treaty recognition to HR was only given in the Maastricht Treaty of 1992 where HR are mentioned several times, including stating that

> »[T]he Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law«. (Title 1, Art. F2.)

This is then followed by insertion of HR provisions in the Treaty of Amsterdam, Nice Treaty and Lisbon Treaty, and finally by the Charter of Fundamental Rights of the European Union, which has the same legal values as the Treaties, though the Charter obliges above all EU institutions. Furthermore, with the Lisbon Treaty, the EU has the obligation to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ibid.).

HR are now mentioned as one of the founding values of the EU in Art. 2 of the Treaty on European Union:

> »The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the

rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.«

As stated by the European Commission website on fundamental rights, EU's goal is to promote HR both internally and around the world. Furthermore, the same source makes an interesting remark that the Treaties interchangeably use the terms »HR« and »fundamental rights«, but that »the reason for choosing one rather the other is not clear. However, the expression 'HR' appears to be preferred in provisions concerning the external relations of the Union (namely its relations with non-Member States and international organisations). In contrast, the Treaty provisions that concern the internal dimension (i.e. the protection of fundamental rights within the EU) use the expression 'fundamental rights'« (Protecting fundamental rights within the Union, European Union, e-source).

Assessing the Charter, Černič & Cigoj write that it represents a "catalogue of substantive human rights in the legal order of the EU" (Černič & Cigoj, 2021, p. 7), but that the current EU human rights system still suffers from a major problem – "the lack of the right to individual application before the CJEU" (ibid., p.8.). Even the existence of the Fundamental Rights Agency (and some other EU institutions in HR related fields) "does not provide an efficient approach to human rights protection" (ibid., p.11). Furthermore, there is an overlap of jurisdiction between the ECtHR and CJEU (ibid.).

The two authors conclude that the EU human rights system suffers from "lack of clarity of competences and their division among different institutions and bodies". The right to individual application should be provided and "the EU system of human rights protection should be brought closer to individuals and groups." (Černič & Cigoj talk about the distant "ivory towers of the European institutions".) Also,

"a more precise determination of the relationship between CJEU and ECtHR would be desirable" (ibid., p.14).

An important and interesting aspect of EU human rights policy is the EU's promotion of HR in external relations of the Union. Two key periodic documents in that area are EU Action Plan on Human Rights and Democracy (European Commission, 2024, e-source) and the annual EU Priorities in Human Rights Fora (Council of the European Union, 2026). HR are also an important part of the annual EU Priorities at the UN General Assembly. As we noted earlier, the reference is here made exclusively to human (and not fundamental) rights.

The documents mentioned cover a very wide area of human rights issues and cases, including some that allude to the so-called progressive human rights agenda of the recent years. Thus the EU Action Plan on Human Rights and Democracy mentions "intersecting forms of discrimination" (Council of the European Union, 2024, p. 6), perhaps as an echo of the analytical framework of intersectionality. There are several references to gender identity and sexual and reproductive health and to prevention of discrimination of LGBTI persons. Similar entries are to be found in the 2026 edition of EU Priorities in Human Rights Fora. What is interesting is that at the time of the adoption of this document in the Council, some Member States have issued statements to clarify their positions, in which they questioned the language used on some of the policies mentioned[9].

This critical assessment of the HR topic in selected key EU documents will now serve as an introduction to the survey of another important EU source, that of the European Council conclusions. The chronological review of incidence of this term in the conclusions may provide additional support to our investigation of the development of the concept of HR in post-war Europe.

[9] These statements are marked LIMITE and cannot be published or quoted for legal reasons.

5. Incidence of the term 'HR' in the conclusions of the European Council 1975-2025[10]

Conclusions of the European Council are by no means the only source of EU policy guidelines, but they do signify regular, periodical and collective voice of the Union[11]; they are a sort of lowest common denominator among the EU member states, and, since the conclusions require consensus, they offer a good orientation in tracing EU policy priorities. This is why it is worth to examine incidence of different concepts in the conclusions of the European Council, in this case the concept of HR.

As already referred to, an important – and first – mentioning of HR in the EC conclusions was the April 1978 Declaration on Democracy. There is then no further mention of the topic until March 1982 EC in Brussels, but here HR are mentioned in relation to developments in Central America and Turkey. It will be another six years before HR are mentioned at the June 1988 EC in Hannover. Here too, HR are mentioned in relations to Latin America, but there is also a reference to HR in relation to East-West relations. Against development in relations with the East bloc, »the Twelve also look for continuing progress towards the peaceful resolution of regional conflicts, universal respect for fundamental human rights, and the free exchange of people and ideas.« A year later in Madrid the European leaders return to the same topic, talking about changes in Central and Eastern Europe. In that context they express regret that »serious violations of human rights still occur in some of those countries in par-

[10] All citations of the European Council conclusions in this section are, unless otherwise specified, from the on-line collection of the European Council Conclusions, see Council of the EU. European Council conclusions, e-source.

[11] European Council conclusions »...are used to identify specific issues of concern for the EU and outline particular actions to take or goals to reach. European Council conclusions can also set a deadline for reaching agreement on a particular item or for the presentation of a legislative proposal. In this way, the European Council is able to influence and guide the EU's policy agenda« (ibid.).

ticular against members of ethnic and religious minorities.« They look forward to intensify relations with the East in a number of areas, including HR. These are again mentioned with regards to Latin America, but also China. The December EC of that year in Strasbourg makes reference to a report on HR activities of the twelve, stating:

> »Cooperation in the field of human rights, which led earlier, in 1986, to a ministerial declaration and, in 1987, to the setting up of a special working group in accordance with the wishes of the European Parliament, has developed further in 1989. This has been a year of contrasts in human rights, marked by progress, particularly in some Eastern European countries [...] The question of human rights has become an important element in the dialogue and cooperation entered into with the developing countries. [...] All in all, the actions undertaken by the Community and its member States in 1989 in the area of human rights have marked a new stage in their common commitment to the respect of human rights.«[12]

At the same summit, a Declaration on Central and Eastern Europe was also adopted, which features the topic. HR also appear in a declaration on the Middle East and in a statement on Central America.

At a special meeting of the EC in Dublin in April 1990

[12] The 1986 ministerial declaration here referred to is the Statement on Human Rights issued by twelve Community foreign ministers on 21 July 1986 in Brussels. For the text see Commission of the European Communities, 1989, pp. 38-39. In the Statement, the ministers reaffirm that respect for human rights as »one of the cornerstones of European cooperation«, as well as »their commitment to promote and protect human rights and fundamental freedoms« in the »context of the principles of parliamentary democracy and the rule of law«. They found the human rights situation in the world »alarming« and note their activities in that regard. They »appeal to all States to enhance public awareness concerning the cause of human rights through educational programmes and by allowing non-governmental organizations freely to disseminate human rights information.« They note the importance of »promotion of economic, social and cultural rights as well as of civil and political rights«, but add that »lack of social and economic development, nor any persuasion or ideology may serve as a justification for the denial of civil and political right.« Of particular interest is the final paragraph where the European foreign ministers speak of the »special responsibility as Europeans« for human rights.

the leaders reacted to democratic revolutions in Central and Eastern Europe. Respect for HR is mentioned among the values that unite Europe. Reference to HR (in terms of need for greater emphasize) also appear in Guidelines on the Conference on Security and Cooperation in Europe. In June of that year, EC conclusions make reference to HR in the same two contexts, but additional reference to HR is made in passages on Sub-Saharan and Southern Africa, as well as in an annex on the development of Political Union. HR are also mentioned in a declaration on the Middle East.

In Rome, in October 1990, a need for increased respect of HR is mentioned in relation to developments in Yugoslavia in that year. In the December 1990 EC conclusions, the topic of HR appear in the passage on Political Union, as well as in the passage on Common Foreign and Security Policy.

There are no mention of HR until June 1991 EC in Luxembourg, when a reference to HR is made in relation with developing countries. More significant is a separate Declaration on HR. The document first refers to the July 1986 Statement on HR by the Community foreign ministers, affirming that »respecting, promoting and safeguarding HR is an essential part of international relations and one of the cornerstones of European cooperation as well as of relations between the Community and its member States and other countries.« It salutes the progress made in the area of HR worldwide and deplores their violation. It calls on all states to accede to international HR treaties, advances the idea of mechanisms for implementation of HR, and for co-operation with intergovernmental organisations in this field. HR violations are linked to threat to international peace and security. Minorities are mentioned. There is a paragraph on indivisibility of HR. The topic is then extended to humanitarian assistance and development. The leading role of the Council of Europe is acknowledged. The leaders recall the importance of the so-called human dimension of the Conference on Security and Cooperation in Europe (CSCE), the Final Document of

the 1990 Copenhagen Conference[13] and the Paris Charter[14]. The role of NGOs is mentioned. In December of the same year HR are mentioned in relation to CSCE.

European Council at its seating in Lisbon in June 1992 has – by then – a usual mentioning of HR in relation of CEE countries. Reference is also made to the Declaration on HR adopted in Luxembourg the year before. In relation to developing countries, the conclusions note that »a political consensus is growing around the fundamental relationship between pluralistic democracy, respect for human rights and development regarded as an equitable and sustainable process focused on the individual.« HR are further mentioned in the attached Report on the development of the Common Foreign and Security Policy (CFSP), specifically also on the North-South relations, but also (again) in relation with CEE countries, the Middle East and Maghreb. In an attached paper by the Commission titled »Europe and the challenge of Enlargement«, respect of HR is mentioned as one of the criteria for membership in the Community. That same year, at the EC in Edinburgh in December, a Declaration on principles governing external aspects of migration policy was adopted, where »full respect for human rights« is mentioned among factors contributing to the reduction of migratory movements. HR are also mentioned in relation to Soviet Union, Iran, Africa and in Declaration on former Yugoslavia, specifically on restoring HR in Kosovo. Finally, HR are mentioned in the context of the Middle East Peace Process.

In June 1993 EC conclusions from Copenhagen, HR are mentioned as a membership requirement in relation to Central and Eastern Europe countries and in a Declaration on Bosnia-Herzegovina, as well as in sections on Africa, Middle

[13] For the full text of this document see https://www.osce.org/odihr/elections/14304 , 20.6.2026.
[14] For the full text of this document see https://www.osce.org/files/f/documents/0/6/39516.pdf , 20.6.2026.

East and Latin America. The standard way of making reference to HR in great majority of these situations is a call to respect of HR in countries and regions mentioned.

Similar is the case for references to HR in December 1994 conclusions from Essen – they are made in relation to Turkey and Mediterranean Policy.

In Cannes in June 1995, the European leaders mention HR in connection with Mediterranean neighbours – there are over a dozen references in a document ahead of a Euro-Mediterranean conference in Barcelona. HR are then mentioned in relations to 50th anniversary of the United Nations and in relation to the situation in Burundi. Later that year in Madrid in December, the EC mentions HR in relation to the situation in Turkey, Latin America, Africa and Asia. Perhaps of greater interest is a reference to HR in an attached La Gomera declaration in which terrorism is presented as »a threat to democracy, to the free exercise of human rights«. References to HR follow also in declaration on former Yugoslavia, EU's strategy for future relations with Russia and related declaration on Russia, Union's Trans-Atlantic agenda, in relation to Euro-Mediterranean conference, guidelines for co-operation with Latin America, and in political dialogue between Europe and Asia (ASEM). Less than routine are references to HR in the section on 1996 Inter-Governmental Conference (IGC), where HR are mentioned as one of Union's common and/or democratic values, as well as a »general principle«.

The topic of IGC continues in Turin in March 1996, but there is only one reference to HR there. In June in Florence, HR are mentioned in relation to Iran, linked to the case of Salman Rushdie. Respect of HR is mentioned in the passage on Asia, in Declaration on former Yugoslavia and in Declaration on Russia. In December in Dublin, HR appears in conclusions on Belarus, in a short passage on the Council of Europe, on Turkey, on EU-US relations (shared regard for promotion of HR), on East Timor, and on Cuba.

In Amsterdam in June 1997, HR featured in passages on former Yugoslavia, Congo, and the Middle East. In December in Luxembourg, the leaders discussed HR in relation to Turkey and the Middle East. A declaration on the fiftieth anniversary of the Universal Declaration of HR was adopted at this EC, recalling its commitment to this principle, stressing its universal character. The EC recalls its own declaration of June 1991, reaffirming »that respect for and the promotion and safeguard of human rights constitute an essential factor in international relations and one of the cornerstones of European cooperation and of relations between the European Union and third countries. The European Council underlines the European Union's substantial contribution to the proceedings of the various permanent bodies dealing with HR within the United Nations, the Organization for Security and Cooperation in Europe and the Council of Europe.« This is followed by an appeal to all States to respect and uphold HR. It expresses support for »integrating human rights into all the relevant activities of the United Nations and other international organization.«

In June 1998, the leaders met in Cardif and called upon Indonesia to respect HR in East Timor. In December in Vienna, a Vienna Strategy for Europe was adopted. The paper called for »reinforcement of European Union action in the field of human rights«, and has a dedicated passage on HR as one of the founding principles of the Union; HR are also mentioned in relation to Russia and Great Lakes region. Reference is made to European Union declaration on HR issued the day before the EC, on the occasion of the 50th Anniversary of the adoption of the Universal Declaration of HR (European Commission, 1998). In that Declaration, the Union reaffirms universality and indivisibility of HR, as well as responsibility for their protection and promotion. »The human being is at the centre of our policies,« says the Declaration. Rights of women and children are specifically mentioned. The work of international organisations and

civil society is acknowledged. In relation to HR international legal instruments, it emphasizes that there »can be no valid exemption from the principles enshrined in those instruments through special provisions based on national, cultural or religious considerations.« It pledges that it will take up violations of HR wherever they occur. It then announces that with »the entry into force of the Treaty of Amsterdam, respect for HR and fundamental freedoms will be a condition for accession to the European Union, and a serious and persistent breach of these rights may lead to the suspension of rights of a Member State.« HR are also said to be one of objectives of Union's Common Foreign and Security Policy (CFSP). The issue of death penalty is mentioned. The document continues with co-operation with international HR mechanisms. The International Criminal Court is specifically mentioned. This is followed by a list of concrete measures to be taken to reinforce the activities of the EU in the area of HR: enhancing the capacity for assessing HR situation in the world; education and training in the area of HR; organizing HR discussion forums; strengthening capacities for responding to the needs in the field of HR; support consolidation of HR (and democracy and rule of law) around the world.

In Berlin in March 1999, European leaders referred to HR in relation to Kosovo. In Cologne in June, the EC discussed further development of the EU and in that context took the view that »at the present stage of development of the European Union, the fundamental rights applicable at Union level should be consolidated in a Charter and thereby made more evident.« There is an (important) decision to that end attached to the conclusions, noting that »the obligation of the Union to respect fundamental rights has been confirmed and defined by the jurisprudence of the European Court of Justice.« The head of governments tasked a body to present a draft document on the subject by the end of the following year.

In addition, the leaders in the conclusions noted »the Presidency's interim report on human rights. The paper suggests that the question of the advisability of setting up a Union agency for HR and democracy should be considered.« HR are also mentioned as one of the issues that need to be addressed in several regions of the EU neighbourhood. Further into document, HR are mentioned several times in the Common Strategy on Russia.

In October of 1999 the EU leaders met in Tampere and made a decision with regards to a body to prepare a draft of the Charter of fundamental rights of the European Union. The main topic of the meeting was justice and home affairs and there are several references to HR, in particular in the context of asylum and migration policies of the Union.

A couple of months later in Helsinki, the enlargement was the main topic (HR mentioned too). Annual HR reports are referred to under the item on external relations. HR are also mentioned in relation to Chechnya, crisis response tools (HR monitoring) and several times in a strategy paper on Ukraine.

In March 2000, European Council met in Lisbon. HR are only mentioned once, in relation with Russia. In June in Santa-Maria de Feira, the leaders were briefed on the work on the draft Charter of fundamental rights. HR were mentioned in relations to Turkey (enlargement context), Russia (external relations), Africa, in the strategy for Mediterranean region (several times), and with regards to EU police deployments.

In Nice in December of 2000, the EU leaders »welcomed the joint proclamation, by the Council, the European Parliament and the Commission, of the Charter of Fundamental Rights, combining in a single text the civil, political, economic, social and societal rights hitherto laid down in a variety of international, European or national sources.« They also returned to the issue of police force, where HR are mentioned.

HR are mentioned again in Gothenburg in June 2001 with regards to Turkey (enlargement context), Ukraine, Chechn-

ya and DPRK. An extraordinary EC was held in September of that year, following the 9/11, and in that context »fundamental rights« are mentioned in relation to combatting terrorism. In December of that same year in Laeken, HR are mentioned in relation to Turkey, Africa and Western Balkans. At the same meeting, a Laeken declaration on the future of the EU was adopted, containing a significant statement, namely that »the European Union's one boundary is democracy and HR.« An idea is also floated on »whether the Charter of Fundamental Rights should be included in the basic treaty and to whether the European Community should accede to the European Convention on HR.«

In March 2002 conclusions HR are mentioned in relations to Nigeria, Palestine and with regards to preparations for the World Summit on Sustainable Development. In Seville in June, HR appear in a declaration on the contribution of Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) to fight against terrorism. Fundamental rights are mentioned as one of the principles on the asylum and migration policy. In Copenhagen in December HR are mentioned in relation to Turkey.

In April 2003, the EU leaders convened in Athens, where a declaration was adopted to mark the decision on the first wave of EU enlargement to happen in 2004. HR are mentioned three times in this document: as a founding value in internal context, in external policies, and also in relation to third country nationals living in the EU. In the June 2003 Thessaloniki EC, HR are mentioned in relation to the International Criminal Court and Iran. HR language on Iran also appears in October 2003 Brussels EC, where HR are mentioned in relation to Bolivia. In Brussels in December of the same year, HR appear in relation to Russia and transatlantic cooperation. The leaders agreed that the mandate of the European Monitoring Centre on Racism and Xenophobia (established in Vienna in 1997) will be extended to make it a HR Agency.

In March 2004 EC conclusions HR are mentioned in relation to Afghanistan. In June of that year, HR are mentioned in relation to fight against terrorism. The EC welcomed the adoption of EU Guidelines on Human Rights Defenders. HR are also mentioned in relation to European Neighbourhood Policy, Sudan/Darfur, Iran, Iraq and presidential elections in Serbia. In December of that year, HR are again mentioned in relation of Sudan/Darfur, Turkey and enlargement, terrorism (fundamental rights), Iran, Western Balkans, in the framework of the EU's support for multilateralism and relations with China. The leaders also called for establishment of the EU HR Agency.

In March 2005, the European Council mentioned HR in relation to the United Nations Secretary-General's report entitled »In larger freedom: towards development, security and human rights for all«. In June, HR are again mentioned in the same context. Furthermore, HR are mentioned in relation to Belarus, Iraq, Iran, Russia, China and Sudan. In an annexed declaration on the principles of the sustainable development, fundamental rights are mentioned a couple of times. HR are also mentioned in relation to Kosovo. In December 2005 in Brussels, the EC conclusions make reference to HR in relation to global approach to migration, and in a declaration on Middle East and Mediterranean.

In June 2006 Brussels EC fundamental rights are mentioned in relation to fight against terrorism. Progress on establishing European Union Agency for Fundamental Rights was noted. Fundamental rights are also mentioned in the context of sustainable development. HR are further mentioned in relation to Iraq and Darfur. In the December conclusions, HR are referred to in the context of enlargement, migration policy and European Neighbourhood Policy, as well as in declarations on Iran, Afghanistan and on African issues.

The EC of June 2007 mentions fundamental rights in the context of work on justice and home affairs, European

Neighbourhood Policy and Central Asia. A mandate on Intergovernmental Conference was adopted and the Charter of Fundamental Rights is mentioned in this context, clarifying that the Charter will be referenced in the new treaty, but not included in it. The December EC welcomed the proclamation of the Charter of Fundamental Rights on 12 December 2007 (the day before the signing of the Lisbon Treaty). HR are mentioned in relation to second EU/Africa Summit held in Lisbon that same month. They are also mentioned (under external relations) with regards to »EU response to situations of fragility«, and development assistance.

In June 2008, HR are first mentioned in relation to fight against terrorism, which must be fully in compliance with respect for HR, but support for HR should also be part of prevention of terrorism. HR are then mentioned in the specific context of children (rights of the child) and in relation to Western Balkans. There is then an interesting indirect reference to HR in the December conclusions, which has to do with some difficulties Ireland (with its then legislation on abortion) had with the Lisbon Treaty. The European Council thus announces to give »a guarantee that the provisions of the Irish Constitution in relation to the right to life, education and the family are not in any way affected by the fact that the Treaty of Lisbon attributes legal status to the EU Charter of Fundamental Rights or by the justice and home affairs provisions of the said Treaty.«[15] In EC conclusions, there is also mentioning of HR in Zimbabwe.

In March 2009 EC conclusions HR are mentioned in relation to Eastern Partnership. In June of that year, the EC was dealing with the rights of workers, but HR are mentioned with regards to Guantanamo Bay detention facilities. The EC returned to the Irish objections to the Lisbon Treaty and issued a decision stating that »nothing in the Treaty of Lis-

[15] It is interesting to note that almost exactly 10 years later Irish constitution was amended to allow for legislating abortion. See Thirty sixth Amendment of the Constitution Act 2018, Irish Statute Book.

bon attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of that Treaty in the area of Freedom, Security and Justice affects in any way the scope and applicability of the protection of the right to life,« as enshrined in relevant clauses of the Irish constitution. A passage on defence and security starts with a reference to HR too: »The Union's action on the international scene is guided by the principles of 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.« To address some other concerns, the EC conclusions contain a solemn declaration on rights of workers, where the Charter and rights of the child are also mentioned. Finally, there is a declaration on Pakistan and Afghanistan that contains a reference to HR.

The October 2009 European Council then addressed the Czech concerns with regards to the application of the Charter of the Fundamental Rights of the European Union to the Czech Republic. A reference to HR is made in relation to Iran. After the Treaty of Lisbon finally came into force, the December 2009 European Council has several references to »rights« (in the context of justice and home affairs area): individual, fundamental and HR are mentioned. HR in Iran are also mentioned in conclusions.

In September 2010 EC conclusions, HR are mentioned in relation to forthcoming summits with China, India, the Republic of Korea and the Asia-Europe Meeting (ASEM), Ukraine and Russia.

February 2011 European Council mentions HR issues in Belarus, HR defenders in Egypt and HR in Tunisia. Extraordinary EC in March mentions HR in southern neighbourhood of the EU. The EC in June underlines the importance of respect of fundamental rights in Croatia (in enlargement context), and HR in Yemen and Bahrain. October 2011 con-

clusions mention civil and HR in southern neighbourhood of the EU, Egypt, Syria and Iran. December conclusions mention HR in Montenegro.

The European Council of March 2012 again mentions HR in the Southern Neighbourhood (with particular focus on Syria) and in Belarus. In June, HR in Syria are mentioned. Furthermore, the EC welcomed the adoption of the EU Strategic Framework for HR and Democracy[16] and the related Action Plan and »underlined the importance of keeping human rights and democracy at the centre of EU foreign policy.« In October, HR are mentioned in the context of Syrian conflict. The EC also expressed satisfaction on the award of the Nobel Prize for Peace, quoting the Nobel Committee saying that »the Union and its forerunners have for over six decades contributed to the advancement of peace and reconciliation, democracy and human rights in Europe« In December conclusions, HR in Syria are mentioned too.

In February 2013 conclusions, HR are mentioned as one of the principles of EU External Policy. That year, HR rights are again mentioned in conclusions of December, in relation to the situation in Central African Republic and in relation to political crisis in Ukraine.

HR in Ukraine are also mentioned in March 2014 EC conclusions. Other references to HR are made with regards to Africa and Sri Lanka. In June, fundamental rights are mentioned several times as one of the key principles in relation to Union's plan of work in the area of freedom, security and justice. HR are also mentioned in the section on EU as a global actor. Special meeting of the EC in August mentions HR in Iraq, Syria and Libya.

In October 2015 fundamental rights are mentioned are one of the principles of the migration policy of the Union.

In February 2016 the EC returned to non-applicability of the Charter of Fundamental Rights of the EU to the UK. In

[16] For the text of the EU Strategic Framework and Action Plan for Human Rights and Democracy see Council of the European Union, 2012.

October 2016 conclusions, HR are mentioned in the context of external relations. In December, HR are mentioned in relation to Association Agreement with Ukraine.

There are no further references to HR until October 2018 EC, where fundamental rights are mentioned in the context of fighting disinformation, radicalisation and terrorism. Reference to fundamental rights with regards to disinformation appear also in December 2018 conclusions.

In conclusions of June 2019, fundamental rights appear in the text on the new Strategic Agenda 2019 – 2024 under the sub-heading »Protecting citizens and freedoms«, stating that "the EU shall defend the fundamental rights and freedoms of its citizens, as recognised in the Treaties, and protect them against existing and emerging threats." HR appear in the same agenda under the sub-heading »Promoting Europe's interests and values in the world«.

In the midst of Covid pandemic, the EC adopted in a special meeting of July 2020 two major documents: Multiannual Financial Framework (MFF) and a document on a specific Recovery mechanism Next Generation EU (NGEU). The two lengthy documents have – despite the necessary constraints on liberties put in place by several national governments due to the pandemic – no reference to HR, although there are two references to »equality between women and men as well as rights and equal opportunities for all«. HR are mentioned in relation to Africa in October 2020 conclusions. Another special meeting of the EC same month mentions the need for respecting HR in the development of digital technologies. It also expresses concern for HR in China. In December, the EC condemned terrorist attacks in Austria, Germany and France, which it sees as »attacks on fundamental rights and freedoms«.

June 2021 conclusions express concern for fundamental rights and HR in Turkey, as well as for the position of HR organisations in Russia and HR violations in Ethiopia. October 2021 conclusions express a need for »full respect of

fundamental rights« in implementation of AI technologies. Upholding fundamental rights is also mentioned in the section of migration. In December EC, fundamental rights are mentioned with regards to the situation in Belarus.

In June 2022 conclusions, HR are mentioned in relation to Belarus. In October conclusions, HR violations in Iran are condemned.

In February 2023 conclusions, fundamental rights are mentioned in the context of migration policy of the Union. In March the conclusions mention HR situation in Belarus. In June, HR situation in China is mentioned.

In February 2024, respect for HR is mentioned as one of the pre-conditions for the financial support to Ukraine. In March, the European leaders condemned the violations of HR perpetrated in Ukraine by Russians. With regards to the situation in Gaza, the conclusions call for respect of the international HR law. In connection to the death of Alexei Navalny they condemn HR violations in Russia. They also expressed concern over HR situation in Belarus. The June 2024 conclusions have Agenda 2024 – 2029 in the annex, where HR are listed among the founding values of the EU. »Universal HR« are mentioned under the sub-heading of »Living up to our values at global level«. In October's conclusions of the European Council HR situation in Venezuela is mentioned. In December, HR in Syria are mentioned.

This rather lengthy summary of HR incidence in European Council conclusions concludes our review of incidence of HR in various EU documents. Before we link these incidences with, on one hand, the overall development of the concept of HR in post-war Europe, and, on the other hand, with general development of liberal democracy in post-war Europe, it is useful to briefly look at the latter. Our intent will be to see whether the big picture of political developments, that is, of the master social narrative had been in anyway reflected in the European Council conclusions.

6. The political-historical context

»Europe did not become a democratic society in or after 1945,« states Conway (Conway, 2020, p. 7). This early post-war democracy »was always circumscribed by stability it sought to achieve and the interests it was constructed to serve« (ibid., p. 7-8). It was a »top-down democratic order«, a »formal democracy« (Ibid.). Furthermore, »[i]mportant sources of conflict remained, most notably across the durable fault line between Christian and liberal or socialist conceptions of democracy« (ibid., p. 11). Much in line with what we saw earlier with Duranti, Conway notes that »by melding together concepts of European identity with certain set of democratic values, the politics of the post-war era became itself a site of 'Europeanization'« and »a smaller and more bonded Western Europe emerged, reinforced by economic integration, transnational institutions, and a shared understanding of democracy« (ibid., p. 22). He too identifies the post-war fear of Communism, as »[t]he Communist parties in German-occupied western Europe had prepared intensively for a revolutionary insurrection during what was anticipated to be the chaotic and prolonged collapse of Nazi rule« (ibid., p. 42). At the same time, Christian democrats »rapidly acquired a prominent presence across a broad belt of largely Catholic territories stretching from the Low Countries to north-eastern Italy« (ibid., p. 45). He observes an »ascendancy of a cautious conservativism«, above all in the area of former Nazi Third Reich (ibid., p. 46). »But increasingly the primary division was between the Communists and the other parties« (ibid., p. 51.). The latter wanted to be seen »rooted in supposedly European values of freedom and pluralism – as the defining symbol of their anti-Communist identity« (ibid, p. 54). This anti-Communism also became »part of cultural identity«, based in »the wider evolution that had taken place during and after the war towards a more conservative-minded mentality« (ibid., p. 57). Thus »[o]ne of the most pervasive con-

sequences of the war years and of the post-war partition of the European continent had been to reinforce the image of Western Europe as a homogeneously European and white society« (ibid., p. 86).

In a similar fashion like Duranti, Conway also concluded that the adoption of Universal Declaration of Human Rights by the United Nations and, even more so, of the European Convention on Human Rights should be seen in the context of »general nervousness within post-war intellectual and political culture as to where the will of people could lead.« They wanted to distance »themselves from the arbitrary expressions of popular power supposedly espoused by the Communists and their allies« (ibid., p. 122).

Furthermore, for non-Communist parties in Western Europe, »Europe provided an identity within which they could frame their higher loyalty to the values of democratic freedom.« Even in the Treaty of Rome »[d]emocracy was therefore little more than a rather vague qualifying test for membership, to be invoked as a convenient justification for deferring the application for membership by Franco's Spain in 1962, and a resonant-sounding motive for the decision to admit Greece as a member in 1979« (ibid., p. 144). In summary, »[t]he Europeanism of the post-war era [...] provided a space where rhetoric of democracy, liberty, and peace overlapped and reinforced one another« (ibid., p. 145). Also, the later European Economic Community »was assumed to be democratic simply because its constituent states were democratic« (ibid., p. 214). In the wider context of the EU enlargement it is also worth quoting Conway mentioning »the apparent ease with which Central Europe was effaced from these accounts« of Europe (ibid., p. 149).

On the other hand, despite conservative efforts to limit the power of the state, »[t]he rapid expansion in state power was the dominant fact of the post-war age« (ibid., p. 206.), even if »this dramatic forward march in state power appeared predominantly to be in conflict with democracy«

(ibid., p. 207). At the same time, a wide network of different interest groups and, in some places, pillared society ensured »a relative absence of such conflicts that, until 1960s, constituted one of the more remarkable features of post-war Western European politics« (ibid., p. 219). Nevertheless, »[w]hile formal democratic rights had become more equal, the degree of influence that individuals had within this culture of state-led democracy continued to be determined by a wide range of factors, the most pervasive of which was social class« (ibid., p. 224). Furthermore, »[d]emocracy became tied to a set of freedoms – of belief, of opinion, of movement, and of opportunity – that appealed most directly to the middle class« (ibid., p. 230). This went hand-in-hand with rising individualism, though »[t]his change of mentality whereby Europeans came to think of themselves as individuals possessed of rights that [...] were inalienably their own is one of the most difficult to trace across the post-war period« (ibid., p. 252). Then in 1960s, »the whole emancipatory pretention of modern democracy was increasingly called into question« (ibid., p. 269). The young generation of intellectuals »emerged as the principal social constituency of hostility to the democratic status quo« (ibid., p. 271). On the other side of the political spectrum, right-wing groups from 1960s on were »generating new language of economic freedom and the defence of cultural values that would lead over the course of the 1970s to a powerful resurgence of centre-right« (ibid., p. 284). On the whole, the 1960s saw a »transition to a democracy where citizenship was based on the rights – both human and more collective – that derived from identity«, and »provoked a surge in a more radical individualism« (ibid., p. 291). Also, »[a] more educated and politicized population was no longer so inclined to accept the constraints that a state-oriented democracy placed on the freedom of individual« (ibid.). Yet at the same time, »anxieties about the future of democracy became commonplace over the course of the

1970s« (ibid., p. 296) and with the fall of the Communism in Central and Eastern Europe »democracy seemed to lack a clear direction« (ibid., p. 303). The narrative became the one of »an individualized democracy that existed only to facilitate »the free construction of personal life«"(ibid.). This is a democracy »based on interrelated spheres of personal choice, identity, and legal and human rights« (ibid., p. 304).

Müller contends that the new form of the state in the second half of 20th century »was not justified by the inherited political languages of liberalism – because liberalism was widely seen as having paved the way for the totalitarian nightmares of the century in the first place« (Müller, 2011, p. 5). Rather, »Western European post-war settlement was the work, if anything, of moderate conservative forces, primarily Christian Democracy« (ibid.). As Conway, he talks about the post-war democracy in Europe as of a »highly *constrained* [italics by Müller] form of democracy, deeply imprinted with a distrust of popular sovereignty – in fact, even distrust of traditional parliamentary sovereignty« (ibid., p. 128). He notes – in a similar vein as Duranti – that Christian Democrats »also embraced human rights as indispensable to a proper Catholic view of the world« (ibid., p. 135). This is attributed to the French personalist philosopher Jacques Maritain, who was also »a central player in drafting the UN Declaration of Human Rights« (ibid., p. 137). Müller explains that «[o]ne reason why human rights proved so attractive to Catholics was that the language of personal rights could be deployed against the threat of 'godless Bolshevism' » (ibid., p. 138). He also traces the development of the European Court of Justice and finds that

> »[i]n 1969 the judges even added the opinion that fundamental human rights were in fact 'enshrined in the general principles of Community law and protected by the Court' – when in fact the original treaties had made no mention of such rights. This discovery or, rather, invention of rights was prompted by the fear

that the German and Italian constitutional courts could oppose European law in the name of basic rights contained in national constitutions« (ibid., p. 149)[17]

Then came the oil shock and the sense of crisis of democracy in mid-1970s. Müller says that »the oil shock was, from the point of view of intellectual history, the most important event since the war« (ibid., p. 203). In France, the whole questioning of the political order led also to increased attention to HR. Thus in 1971, French constitutional court »established the principle that the human rights were to be protected by the court« (ibid., p. 207). Müller notes that HR became an area where «long-standing liberals, renegade leftists [...] could unite in a moral project which transcended deeply entrenched ideological disputes« (ibid., p. 209). But there were Western HR sceptics too, saying that HR »were invisible before 1945, mouthed in 1948, discarded for three decades, and then seized by Western governments as a weapon in the Second Cold War (1978-85)« (Fawcett, 2018, p. 296).[18] Fawcett comments that such criticism »belittled the entrenchment of human rights in Western European legal practice« (ibid.).[19]

What marked the political space in Western Europe after the oil crisis was »a shift of mood against the state at the political centre« (ibid., p. 381). This led to a gradual turn of liberals to the right, especially in the economic sense. Fawcett writes about "Right Liberalism" in 1970's and 1980's under Thatcher, Reagan, and Kohl (ibid., 2018, p. 375).

Helsinki Accords of 1975 played a role too, even if the Communist »regimes themselves had assumed that the human rights basket meant nothing« (Müller, 2011, p. 227). As Thomas writes, it was the Greek coup d'état in 1967, which led the European Community of the day to highlight the im-

[17] Müller is here most likely referring to the so-called Stauder case. See CJEU, Erich Stauder v City of Ulm - Sozialamt. e-source.

[18] Fawcett places the First Cold War in the period 1947-1970.

[19] In addition to Fawcett, Müller too draws attention to lesser known contributions to the idea of democracy and human rights from behind the iron curtains, mentioning Alexander Yessenin-Volpin in the then Soviet Union, Adam Michnik in Poland, Jan Patočka and Václav Havel in the Czech Republic (Müller, 2011, pp. 227-231).

portance of fundamental values like human rights. Later on, in the preparatory phase of the Helsinki security conference the phrase "the freer movement of people, ideas, and information" made the way into the draft text as a code word for human rights. Thomas underlines how it was NATO members, but without the United States, and above all the European Community of the day who insisted on the human rights clause in the final Helsinki text of 1975 (Thomas, 2019, pp. 28-51).

Yascha Mounk focuses his interpretation of that period on the rise of the postmodern, starting with Michael Foucalt's »rejection of all »grand narratives«, including Marxism«, which »grow deeply sceptical of claims to both objective truth and universal values« (Mounk, 2023, p. 36). Together with other thinkers, including post-colonial and critical race theory scholars, this led to what Mounk describes »the rejection of the civil rights movement and the rise of critical race theory« (ibid., pp. 49-62), which in the end put an enormous emphasize on the identity. This emphasize was also the end of classic liberalism, with its focus on individual rights, the end of the Cold War »turn to rights« (Rosenblatt, 2018, p. 271).

At the dawn of the changes in Europe in late 1980s, Europe thus had two liberalisms: one, economic, firmly in place, and the other, transformed into its postmodern version of identity-focused politics. According to Pabst,

> »the New Left from the mid-1960s onwards took socialism in a doctrinaire direction that was abstract and soulless. It equated the purpose of the left not so much with the struggle for greater economic justice as primarily with cultural liberation. Henceforth socialist preferred progress to tradition, identity to class, and free choice to common purpose. Then the New Right combined a libertarian economics with a corporate capture of the state. This had the effect of aligning conservativism with borderless capitalism and with individual

> freedom devoid of mutual obligation. [...] Across the West the political contest descended into the culture wars. [...] The radical right and hard left stepped into this void« (Pabst, 2019, pp. 82-83).

Pabst also talks about these two liberalisms, saying that »[t]he exponential growth in consumer and sexual freedom has become a kind of opiate that covertly reconciles people to the loss of civil liberties and self-determination at the workplace« (ibid., p. 110). He says that the resulting political liberalism (which he links with the namesake concept by John Rawls) provides the »intellectual basis for a left-wing focus on individual human rights«, while the right focuses on property and other private rights, both converging around »a rights-based liberalism« (ibid., p. 111). He describe this political setting as »the rise of hyper-liberalism and the corrosion of democracy« (Pabst, 2019, p. 149).

Thus a scene was set for both a neo-liberal agenda, focused on maximizing economy and business liberties, as well as for a socially-progressive HR agenda, and, ultimately populist reactions.

We will now wrap up our findings to arrive to some assessment of the role of the HR in European Council conclusions since 1975.

7. Discussion

Let we first summarize the key points on HR in the conclusions of the European Council. While this organ was only established in 1975, the first reference to HR in EC conclusions dates in 1978, followed by a brief reference in 1982 and, with another pause, again only in 1988, this time triggered by events in Eastern Europe. It will be developments in Central and Eastern Europe that will for the next couple of years provide substantial material for references to HR in the EC conclusions. In 1991, this resulted in a separate Declaration on HR (European Council, 1991, e-source,

p. 25-28), though that text has an almost exclusive external dimension.

References to HR in regards to EU external relations and situations in various parts of the world became a standard occurrence in the conclusions: over the period 1975-2025 several HR situations are mentioned in relation to almost all third countries in the world, certainly the ones experiencing any kind of turmoil. HR are also mentioned in relations to various neighbourhood polices and the overall Common Foreign and Security Policy of the EU.

In 1995 we note a novel context for the use of HR, linking respect for HR to terrorism, representing the latter as a threat ("attack") to HR exercise. References to HR in that context are repeated after 9/11 and again in 2008.

In 1996, in the context of Intergovernmental Conference, HR are mentioned as one of EU's democratic values and general principle – a relatively rare use of HR in internal context.

In 1997, HR got further prominence in the conclusions given the 50th anniversary of the Universal Declaration of Human Rights, but here too, the external dimensions of HR is emphasized. Similar is the 1998 reference to HR in the Vienna Strategy for Europe. In a separate Declaration on the 50th anniversary, there is also an announcement that respect for HR will be a condition for accession to the EU.

HR are mentioned from the EU internal point of view in 1999, when discussing further development of the EU. A plan is mentioned of a Charter of what is referred to as »fundamental rights« and of an HR agency of the Union. In December of 2001, the so-called Laeken declaration on the future of the EU says that »the European Union's one boundary is democracy and human rights« (European Council, 2001, e-source, p. 20) – something that brings memories of the Council of Europe demarcating Europe half a century ago, as we saw earlier. That year a discussion also started on whether the Charter on Fundamental Rights should be

included in the Treaties and whether the EU should accede to the European Convention on Human Rights.

Among the new areas linked to HR, the 2002 brought a reference to fundamental rights as one of the principles of the EU asylum and migration policy. A similar reference to HR is made in 2007 in the context of justice and home affairs area.

Ahead of 2004 EU enlargement a declaration in Athens makes an interesting, three-dimensional reference to HR: as internal founding value of the EU, in external relations, and with regards to third-country nationals living in the EU. This reminds us of von Bogdandy's »three different human rights standards«, as quoted earlier.

A kind of self-congratulatory tone on HR can be detected (again) in October 2012 conclusions noting the Nobel Prize for Peace Award to the EU.

Another novel reference to HR (or, more precisely, fundamental rights) is the 2018 mentioning of the subject in connection to the fight against disinformation, radicalisation (and, again, terrorism). The following year conclusions talk about protecting citizens from "existing and emerging threats."

In 2020 and 2021, references to fundamental rights are made in relation to digital technologies and specifically the AI.

References to HR in European Council conclusions in the last three years of observed period are again mainly in relation to third countries.

In summary, from the quantitative point of view, the first and relatively sporadic occurrences of HR in European Council conclusions are to be found in late 1970s and early 1980s. HR reoccur in late 1980s and from 1990 are a constant and frequent feature of the European Council conclusions.

From a qualitative point of view, it is quite clear that while HR are certainly a fundamental value that the EU strongly identifies with (it is Union's own, internal fundamental

value), the majority of incidences of the term have to do with external relations. This can partially be explained by the difference between human rights and fundamental rights though the distinction between the two has only emerged gradually and – judging by the European Council conclusions – seem to become a standard only with the Charter on Fundamental Rights. Human rights are, above all, a norm that the EU requests others (candidate countries, third countries) to adhere to. In those settings, human rights are simply human rights (and not fundamental rights).

As far as fundamental rights are explicitly concerned, we see them mentioned in the conclusions for the first time in 1978. They reappear in June 1989, after which there is a sporadic occurrence of fundamental rights in 1990s. Incidence of fundamental rights term increases significantly in the second half of 2000s when the work begins on the Charter. After 2010, there are only occasional references to fundamental rights in the European Council conclusions, mostly in relation to terrorist attacks and other issues in the area of freedom and justice.

What can we conclude from this summary of the HR occurrence in the conclusions of the European Council in the period 1975-2025?

They confirm that – contrary to the established narrative – HR have for a long time not been a significant subject of interest in the EU – only from 1990 they represent a constant feature in the conclusions. The established explanation is that of the EU leaving the subject to the Council of Europe. The alternative explanation given by De Burca is the one of EU's pragmatic choice. Both explanations present a picture of the EU in relation to HR that is at odds with the current image of the EU as a HR champion (or, as some have speculated, an HR organisation). Evidently, this picture emerged at a later stage, with the awakening of interest in HR with the developments in Central and Eastern Europe in late 1980s. As we saw, the European Communities of the time did make

a key contribution to the inclusion of HR provisions contained in the 1975 Helsinki Final Accords. During negotiations, »the EC countries remained adamant that no progress could be reasonably expected unless both sides could agree on tangible results on the question of human rights« (Adiban, 2024, pp. 289-290). As Thomas (Thomas, 2019), Adiban underlines that it was the Western Europeans (and not the US) that were pressing the Soviet Union »to concede that human rights norms constitute one of the core issues of international security« at a time that they »were developing a new conception of peace and security that required respect for human beings and their »universal« rights and liberties« (Adiban, 2024, p. 290).[20] Similarly, Gfeller says that the member states of the European Community of the time "played the lead role in persuading the Soviets and their allies to admit these provisions in the text" (Gfeller, 2014, p. 391).

Still, the strong emphasize on HR since democratisation in CEE is intriguing and would require further study. Did the democratisation of CEE, as an expression of longing for respect for human rights simply renew EU's interest in this fundamental value? Or were there concerns that CEE countries will not fully respect HR for some reason? One could speculate that, in late 1980's, the European Communities were taken by surprise of the events in CEE, fearful of risk to stability in Europe, and therefore wanted to make sure that the democratisation process follows an orderly path, including with respect to HR. We saw earlier Besson writing about enlargement being seen as a potential threat to HR (Besson, 2006, p. 324). Thus the renewed interest in HR that came with the fall of the Berlin Wall also marked the beginning of HR becoming an EU accession conditionality, as we saw in 1993 Copenhagen conclusions – once it became apparent that CEE countries may seek EU membership.

[20] For an account of the role of European Parliament in promoting HR agenda within the Helsinki Process see Gfeller, A.E. (2014.) Champion of Human Rights: The European Parliament and the Helsinki Process. Journal of Contemporary History, 49(2), pp. 390-409.

The case of minority rights, especially in former Yugoslavia, as described by Williams, provides a good case in point. But one other, more recent observation can be made in relation to group rights: while the EU remains very cautious on this type of rights (e.g. of ethnic and language minority groups) and emphasize respect of individual rights, it does single out the LGBTI as a group.

What is also interesting about the renewed interest in HR from late 1980s on is that it apparently did not result in much self-reflection on EU's own HR record at the time. It seems that the EU remained – ever since its first beginnings – convinced of itself and its Member States being non-problematic from the point of view of HR. In the eyes of the EU and its Member States there were other countries (third countries and EU aspiring members) that still needed to reach a similar standard of respect for HR, while at the same time HR were for EU internal purpose rebranded into fundamental rights, with no clear explanation of this move. HR references are overwhelmingly made in relation to third countries and on enlargement. Yet despite this high standing of HR in the EU and creation of the Charter of Fundamental Rights, HR standards have continued to be set primarily by the European Convention and the European Court of Human Rights, while the issue of the EU accession to the Convention has remained unresolved. This brings to mind the European countries' willingness in the immediate post-war period to constrain their sovereignty through submission to the European Court of Human Rights. Perhaps the current hesitance of the EU to accede to the European Convention now reflects a certain lack of willingness on part of the EU to constrain itself.

8. Conclusions

We have presented the development of the concept of HR in the EU in political and historical context and found that

European countries considered the HR mostly as a subject matter of the Council of Europe. From late 1980s on, there are regular references to HR in various EU documents, and HR are established as one of fundamental values (indeed as fundamental rights), while HR are mainly a conditionality for candidate countries or third countries. It was in the same external context that in the recent years we saw references to progressive HR.

We have asked ourselves at the outset how is this development reflected in European Council conclusions. Given the fact that the European Council was only formed in 1975, we can only trace possible influences of the development of political space and HR concept in Europe on the references to HR in the European Council conclusions after that year. As we have seen from Duranti, European Communities in their early days were not very much concerned about HR, and left the subject largely to the Council of Europe. We have also seen that immediate post-war political developments were very much marked by the role of conservative parties, which went hand in hand with the reasons and the way the HR were introduced in the political discourse of that period.

A growing awareness of human rights in 1970s was indeed reflected in the conclusions of the European Council, even if the references to HR only became a constant from later 1980s and early 1990s.

Later on, the influences of external factors (developments in CEE, terrorism, migration, developments in individual third countries, disinformation) are clearly accounted for in the EC conclusions. One could, like von Bogdandy, indeed talk about proliferation of HR topic in the European Council conclusions (and other EU documents) or, as Avbelj writes, about "human rights inflation" or even »ideology« (Avbelj, 2018, p. 7), or of as Pabst's »hyper-liberalism«. HR have, as we have seen, appeared in a wide array of topic dealt with by the EC. While internal dealings with HR and its codification got a reasonable amount of attention, the majority of

HR references were made in relation to third countries and EU aspiring States.

Less visible in European Council conclusions and other EU documents, however, are more recent influences, of what Pabst names as a tension between the New Left and the New Right, above all the impact of the post-modern transformation of the quest for HR into quest for highly individualized and group identities, as described also by Mounk. There are no indications from our survey that these developments and accompanying new master social narratives have had any impact on the European Council conclusions. There is no reflection of modern-day cultural wars in the European Council conclusions. European Council remains silent on the so-called progressive HR agenda, by which we mean the focus on gender, identities (sexual and different minority identities) and the Diversity, Equity and Inclusion agenda.

This sense of silence is reinforced by the fact that the interpretation of HR is left to the European Court of Human Rights – and not to an EU body. Charter of Fundamental Rights has so far done little to offer guidance on this agenda and »the awareness of the Charter in civil society of the EU remains very low« (Černič & Cigoj, 2021, p.8). Rather, we have seen "soft law" appearing in these areas[21]. One could add that these topics have perhaps migrated to other, less visible EU documents, e.g. Council of the EU conclusions, as we saw with the document on EU human rights priorities in UN fora. Progressive development of HR in the EU has been – as e.g. social and health policies remain a national competence – seen in documents dealing with third countries, thus projecting outwards a HR vision that is not entirely shared internally in the Union.

Finally, let us look at what we could infer from our survey above on the future of the HR agenda of the EU.

[21] See e.g. Diversity and Inclusion Initiatives, European Commission, e-source or Combatting Discrimination, European Commission, e-source.

As we know, the EU is not ready yet to accede to the European Convention of Human Rights for legal reasons[22], which, however, at the end of the day are also a political question of competence. The push for that move continued at least until recently, despite doubts that accession could indeed deliver on the key promise of individual recourse. It is difficult to see the present state of international affairs or internal political situation in EU member states conducive to such a move in the near future. Further "proliferation" of HR could also negatively affect the balance between EU institutions on one hand and member states on the other. The EU thus seems to be likely to continue to display the same pattern that marked its inception: leaving HR to a large degree to the Council of Europe, despite the Charter and considerable EU record in the HR area, both internally and externally. As noted by Fabbrini and Williams, this multilevel (or »pluralist«) EU HR system adds to some differences on precise meaning of HR across the Union, while challenges to HR regime continue. New challenges are on horizon with regards to migration policy (e.g. refugee centres in third countries). These new HR issues may arise both from the advance of conservative (and populist) governments, as well as from actors continuing pushing for the so-called socially-progressive ideas, as we saw from recent reservations by certain member states on progressive language of the Council document on HR promotion. All these may result in further contestation of HR within the EU in the future and may even question the values underpinning liberal democracies and/or how we understand liberal democracy.

[22] The ECJ "concluded that accession was liable to upset the underlying balance of the EU and undermine the autonomy of EU law." See Completion of EU accession to the European Convention on Human Rights, European Parliament, e-source, where it is also said: "For the European Parliament, the principal benefit of EU accession to the ECHR lies in the possibility for individual recourse against the actions of the Union, similar to that already enjoyed against Member States' actions. Moreover, in the Parliament's view, accession to ECHR will constitute a further step in the process of European integration and will send a strong signal concerning the coherence between the Union and the Council of Europe's human rights system."."

We have seen that in the embryonic phase of the European integration, HR served to fend off the return of fascism and, above all, advancement of Communism. The agenda of conservatives of today look surprisingly similar to the agenda of conservatives of the immediate post-war era: conservative (and right-wing populist) parties in Central and Eastern Europe and elsewhere have today similar worries and similar fear of the Left. They are concerned about extinguishing basic freedoms: freedom of speech (in the name of struggle against hate speech and disinformation); about right to educate their children in private schools (vs the role of public schools); about religious freedom (in the light of socially progressive agenda restricting the area of conscious objection in matters like abortion and euthanasia); about powerful socially-progressive majority in national legislatures that can trump on any opposition etc.[23]

What is different in comparison with immediate post-war period is that the ECtHR, which conservative human rights movement helped create seven decades ago is today unlikely to vindicate the modern conservatives, certainly not along the lines expected by them (and by populists).

Conservatives of today would also have hoped to make culture and ethics central, as Duranti wrote about immediate post-war conservatives, but they are confronted with what they define as culture wars with little hope of winning. Conservatives' luck in that war may be changing in the United States, where President Trump in the first months of his second term in 2025 issued several Executive Orders related to issues of gender[24], (though not e.g. on another hot issue, that of abortion). Along these orders, several companies in US have also embarked about dropping or changing DEI work-

[23] This is for example evident also from the attitude of the centre-right opposition (legislative term 2022 – 2026) in Slovenia towards the plethora of HR NGOs in the country, whose findings are flatly rejected by the same circles as ideologically biased.

[24] Executive orders Keeping Men Out of Women's Sports, Ending Radical Indoctrination in K-12 Schooling, Prioritizing Military Excellence and Readiness, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government. For the texts see Executive Orders, White House, e-source.

force policies (Xiao, Rogers & Murray, 2025). Do these developments mark the end of a certain HR »ideology« in the US?

It will certainly be interesting to see whether other countries of the world, including the rest of the global West, will be influenced by these changes in the United States, in particular given the accompanying US-inflicted changes to liberal international order. A weakened liberal international order may lend added support to conservative trends also in domestic politics elsewhere, or at least reduce the appetite for socially-progressive HR agenda[25]. Could therefore the prospect of an international order based in realism have an impact, resulting in a new divergence on how we look at HR? We can – applying Moravcsik's theory – wonder who could today be the main advocates of a more ambitious HR agenda? Who fears the most from the current threats to the liberal international order? Which liberal democracies will continue to be willing to delegate a part of their sovereignty to a supra-national judicial body in matters of HR (or otherwise)?

Furthermore, we should also think, whether the HR will continue to provide a yardstick for demarcation of Europe (European Union). While the EU as a whole, including the more socially-progressive strands in EU politics, still like to hear of HR being an important part of EU identity, the modern conservatives would have rather mixed feelings about current dominant interpretation of HR as an element of EU identity. Can therefore one say – like Duranti observed with Europeans in 1940s and 1950s – that HR (continue to) divide Europeans? Judging from the relative silence of the European Council conclusions – at least on interpretation on HR related contentious issues such as gender, sexual identity, abortion, euthanasia, religious freedom etc. – one can indeed conclude that there are ideological divisions; not on

[25] In April 2025, the UK Supreme Court ruled that definition of a »woman« in equality legislation refers to persons having been born biologically female, and not also to transgender women. See Grey, Fisher and Kerr, 2025, p. 2.

the way fundamental rights feature in the Treaties and in the Charter, but in the way they may be implemented in certain EU policies and in national policies in the Member States. But these divisions seem to be concealed for now, at least in the European Council conclusions. It will be interesting to look for any hint of them in the future.

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