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MAŁGORZATA WRÓBLEWSKA*

TOWARDS AN INTEGRATION OF THE LEGAL NORMS OF THE WTO AND THE EU

Abstract

The WTO, which is composed of 164 Member States at different levels of development, currently plays an increasingly important role as a legal regulator on the global level. Simultaneously, the EU (which currently consists of 27 Member States) has introduced law at the regional level. Although these two organizations do have similarities, they also differ significantly from each other and in practice function in isolation. The WTO is an entity /with its own legal norms, whose aim is to support trade liberalization. On the other hand, the EU is notable for guaranteeing peace, promoting shared values and generating wealth for all EU citizens by means of its own norms. As the EU and its Member States are a State Party of the WTO, the legal regulations of the WTO are included in EU sources of law and are binding for all EU Member States. Thus, the relationship between the WTO and the EU is closely related. This contribution deals with the theoretical comparison between the EU and the WTO in the context of axiology, basic principles and human rights protection aspects. I am of the opinion that it is not justified to look at these organizations in a completely separate way but to identify their common features. The main aim of the contribution is to confirm the hypothesis whether the process of integrating their legal regulations is possible. To consider this issue the

* Ph.D. at the Institute of Law and Security Sciences at WSB University in Gdansk, Poland. The Author specializes in the WTO tax regulations and local government finance especially in real estate taxation. Author of about 50 reviewed publications. Member of Information and Organization Centre for the Research on the Public Finances and Tax Law in the Countries of Central and Eastern Europe and Polish Association of European Law.
Contact email: mwrobmwrob@gmail.com, ORCID: https://orcid.org/0000-0003-1149-9962.

Author has divided this paper into three parts: an introduction, a study of the WTO, a study of the EU and a conclusion. The following research methods have been used: legal comparison, analytical and descriptive.

Key words: EU, WTO, integration tax.

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1. Introduction

Economic cooperation attempts to face issues resulting from increasing globalization. Nation states initiate processes of integration, which, depending on their level of development, strive towards differing levels of cooperation. In each situation, it is for every country to decide voluntarily on its aims when being part of such an organization, and therefore on the type of cooperation which best reflects mutual normative and institutional relations. The etymology of the term integration comes from the Latin integrare, which means to make something whole from different parts. The contemporary word in the economic sense understands the term integration as a unifying force, which binds regions or states together. Further, integration means the elimination of economic barriers between states for them to function as one entity. Economic integration is not an aim in itself, rather it is a dynamic process which seeks to achieve economic welfare, peace and stability as well as respect for human rights [Shaw, 1993:223]. Economic integration is a process, which has different levels[1]. Taking into consideration the WTO and the EU law the degree of this two organizations integration[2] is distincted. In a general sense it is defined in the doctrine as an integration of markets [Molle, 2006: 4-31] of which the basic element is the liberalisation of trade, which is the common feature of the WTO and the EU. As an example, the free movement of goods relies on cooperation devoid of any barriers between Member States. Its essential nature comprises complementary legal frameworks and the elimination of any distortions and limitations to increase the level of integration.

In this article, research has been carried out on the WTO and the EU, which are examples of two different types of integrated entities. Such as analysis is essential when taking into account the fact that the WTO and the EU are linked to each other. In practice the WTO and the EU function in isolation, a fact which is not actually justified as the EU is a Member of the WTO and therefore its legal order is also a part of the EU's. The aim of this article is to theoretically compare the WTO and the EU by analysing and contrasting selected legal

[1] It can be classified into five steps such as: preferential trading area, free trade area, customs union, common market and economic and monetary union.
[2] In Polish literature, the concepts of regional integration were examined by C. Mik [Mik 2019].

regulations in order to state whether they are alike and if so how. The hypothesis of the article is whether the process of integrating their regulations is possible. The research has been carried out with reference to the following question: is the integration process of legal regulations between the WTO and the EU possible and desirable?

The article is divided into three main parts: an introduction, understanding the WTO, the EU and a conclusion. In the sections relating to understanding the WTO and the EU four main points have been identified. The first pertains to the genesis of each entity, which is especially important when considering the aim and the scope of the implemented regulations and also when identifying whether EU law remains under the influence of the WTO. The second describes the axiology of each one, which is significant for the legal interpretation of norms, which should reflect individual values. The third presents the fundamental principles, which form the basis of each organization and the fourth analyses the question of the protection of human rights. The final part of the article lays out the conclusions. The following research methods have been used: legal comparison, analytical and descriptive.

2. Understanding the WTO and the EU

The essential characteristics of the WTO and the EU have a crucial influence on considerations resulting from their legal regulations [Muller-Graf, 2008: 147]. Thus, it is important to identify the aims and principles of the functioning of each organization. This allows us to understand which values are recognized as worth protecting by the organizations' Member States and to comprehend the legal system, which supports this. Assuming that the legal text is an element of this system, the regulations of the free movement of goods reflect the aims of these organizations. This has an impact on the interpretation of the law in a practical sense and the effectiveness of its application.

2.1. The WTO

WTO as an international organization

In 1941, during the Second World War, the two leaders of the USA and the UK, at that time the dominant economies of the world, agreed for the need to create a system to reconstruct nations destroyed by the war. The institutional framework of this concept was presented at the United Nations Monetary and Financial Conference, the so-called Bretton Woods, in 1944. The new system of managing the global economy would be based on the

creation of three complementary international institutions: the International Monetary Fund, The International Bank for Reconstruction and Development and the International Trade Organization. In 1946, the International Monetary Fund and the International Bank for Reconstruction and Development commenced their activity on the basis of the Bretton Woods Agreement, whereas the establishment of the International Trade Organization was found to be impossible to realize in practice.

Amongst the fifty negotiating members states of the conference [Selivanowa: 2005, 289][3], there was a willingness for the International Trade Organization to deal not only with trade but also with matters connected with services, foreign direct investment, business practices and employment as well as the possibility of referring legal matters concerning the functioning of the International Trade Organization to the International Court of Justice [Ludwikowski, 2019:87]. Despite the fact that the International Trade Organization Charter was adopted in 1948, it has never come into force [Kinley, 2009: 39-40] because the USA Congress has never consented to ratify it. In the face of this refusal by the largest participant in international trade, the remaining Conference members recognized that the establishment of the trade organization was therefore meaningless.

During the work on drawing up the International Trade Organization, fifteen signatories focused on negotiating a straightforward agreement to regulate the question of the trade in goods. Subsequently, the General Agreement on Tariffs and Goods was signed on 30 October 1947 [GATT 47] and one year later, in 1948, eight countries including the USA[4] signed up to the GATT on the basis of the Protocol of Provisional Application. Significantly, this Agreement did not require the approval of Congress, indeed from a technical point of view this was merely accepted on the basis of the U.S. Reciprocal Trade Act of 1934. At that time it was expected to be a temporary measure until the establishment of the International Trade Organization. In practice, however, it filled the function of a quasi-international institution for almost fifty years acting as the framework of liberalized trade. It was not until 1994, at the end of the Uruguay Round, when the Marrakesh Agreement was accepted and on 1 January 1995 [Marrakesh Agreement] the World Trade Organization (WTO) came into force. Annex 1A of the WTO Agreement [Latif, 2020] contains the following: The General Agreement on Tariffs and Trade, GATT 94 incorporating the provisions of the GATT 47 (GATT), the provisions of the legal instruments concluded under the GATT 47 before the date of entry into force of the WTO;

[3] The Soviet Union did not participate in the creation of the International Trade Organization, even though the United States attempted to include this country in the process of negotiation.
[4] Australia, Belgium, Canada, France, Luxembourg, the Netherlands and the United Kingdom.

six Understandings adopted during the Uruguay Round on the interpretation of the certain provisions of the GATT 47 and the Marrakesh Protocol to GATT. The basic aim of the WTO Agreements is to establish a free trade area where states have agreed to remove all customs duties and quotas on trade between them. Simultaneously, each member is free to determine unilaterally the level of customs duties on imports coming from third parties [Craig, de Burca, 2011: 581].

Axiology of the WTO

Every legal system is characterized by its own axiology, incorporating the most fundamental and crucial values. Even though in the WTO legal order axiology understood as a normative category does not exist, it can be accepted that it does figure in the Preamble to the Marrakesh Agreement as a catalogue of values. This axiology states that growth is the organization's main consideration. Even though this document does not set out directly an intention to ensure global peace and safety it is significant that the GATT 47 was adopted soon after the Second World War. Consequently, its signatories took these values into consideration bearing in mind that protectionist practices used at the beginning of the 1930's had contributed to the outbreak of war. When analysing the contents of this Preamble it is worth pointing out that the basic value of the organization is the economic development of the Member States.

The State Parties agreed to raise standards of living, ensure full employment, increase the volume of real income and effective demand as well as expand the production of trade in goods and services. These developments should occur together with the principle of sustainable development and should respect the needs of developing countries. It is worth mentioning that the name of this international organization is closely tied to the idea of free trade, which is not actually mentioned in the Preamble. This, however, does not mean that this concept is marginalized. On the contrary, trade is treated as the engine of economic development. Therefore, the aim of the WTO is to ensure that trade flows smoothly, predictably and freely. There is no direct effect of the WTO law [Lim, 2020], and therefore individual trade rights are not directly applicable. As a consequence, WTO law does not establish a trade constitution and the individual has no right to freedom to trade [Stoll, Schorkopf, 2006:35-37]. Therefore, only a Member State/UE can sue another Member State, not a particular business entity.

In order to realize this purpose, the WTO acts on a number of fronts. Firstly, it operates as a global trade regulator. Secondly, it functions as a forum to negotiate trade agreements.

Thirdly, it resolves trade disputes between its Member States, and fourthly it supports the needs of developing countries.

Basic principles

The WTO as a multilateral trading system consists of four principles. Their aim is to maintain equal standards of competition between entrepreneurs from Member States and to strengthen rules of commerce [Matsushita, 2020; Van den Bossche, Zdouc, 2017]. One can state that these principles broadly cover the principle of non-discrimination, the principle of predictable and growing access to markets, the principle of undistorted and fair competition and the principle of encouraging development.

The non- discrimination principle set out in the GATT is the most fundamental principle and acts as a guarantor of the free trade system. This principle consists of the most favoured nation clause and the national treatment clause. They are the most frequently used legal instruments employed by Member States to regulate mutual trade relations. The most favoured nation clause is established in Article I of the GATT on the obligation of each State Party to recognize the rights of other Members which are granted to any other third Party and this is greatly significant as it effects other Member States automatically. According to Article III of the GATT, the national treatment clause each Member State is obliged to treat the goods of the other Member States in the same way as domestically produced products. Essentially this means that imported products enjoy the same protection as internally produced like products. There are some exceptions to the principle of non - discrimination. For example Article XXIV allows WTO Members to provide more favourable treatment to other WTO Members with which they have entered free-trade areas or customs unions [WT/DS34/AB/R, paragraph 58].

The principle of predictable and growing access to markets means that states are bound by the commitments to open their markets. Trade liberalization is not the aim per se, but it constitutes an instrument to carry out economic aims. Member States independently make decisions on lifting limits, which means that according to the GATT they are not obliged to open their markets unilaterally or to introduce individual state restrictions. The rules on trade liberalization reflect the situation in which Member States respect each other's interest set out in Article XXIV of the GATT on preferential trading areas and customs unions. These forms of integrational formations are without doubt favourable for their Member States. For those outside, however, they are a form of discrimination as they are treated in a less favourable way. The rules of trade liberalization category contain

exceptions. This is due to the fact that in practice a conflict may arise between the liberalization of trade and other protective values as mentioned in Article XX and XXI of the GATT (e.g. environmental protection or the protection of a domestic industry from serious injury inflicted by an unexpected and sharp surge in imports). Such a conflict can be resolved by the Member States.

The principle of undistorted and fair competition focuses on multilateral negotiations between Member States. Due to this fact custom tariffs shall be lower and made transparent in order to facilitate commercial exchange. The WTO is generally referred to as a free trade institution. The concept of free trade is closely related with fair trade. Although the latter does not have a normative definition, it should be researched in a more systematic way and all WTO regulations strive towards ensuring fair trade. Neither the Marrakesh Agreement nor the GATT define unfair trade. Simultaneously there are no general rules in the scope of unfair trade practices. Nevertheless, dumping and trade subsidies are examples of distortions in a market and can therefore be understood as unfair trade practices. The category of the rules on market access does not have a numerus clausus characteristic. It covers rules on customs duties, rules on other duties and financial charges and rules on quantitative restrictions. Rules on other non-tariff barriers are also included here but they are very wide ranging as they incorporate any measures which may impede access to a market when considering the protectionists interests of Member States. Amongst the most significant barriers are the rules on lack of transparency. The definition of transparency signifies that trade policies and practises, as well as the process by which they are established are open and predictable. Rules of transparency have always been at the core of the GATT obligations. In accordance with Article X of the GATT [Perez-Esteve, 2020] these rules consist of two tiers. First, Member States are required to publish or notify obligations relating to transborder trade. Second, the WTO practice of “peer review” in bodies which play an important role in this sphere is carried out.

The principle of encouraging development mirrors the value of the World Trade Organization which is to facilitate economic development in the world. The WTO is an institution with a global reach. It consists of 164 Member States at different levels of evolution. A significant proportion of these Member States can be found in the developing world. To further their economic growth and to ensure improved trade the WTO has published regulations pertaining to special and differential treatment, which include fewer obligations or differing rules and technical assistance.

The multilateral trading system comprises not only the substantive principle but also institutional and procedural ones. None of these regulations functions in isolation from

each other. They must be analysed in a complex manner because they mutually complement each other and guarantee that the WTO system is both coherent and complete. Institutional and procedural regulations encompass decision-making and dispute settlement procedures. For Member States these are key tools to respect their rights. They also indicate whether the WTO is a fully democratic and transparent institution, which is based on the principle of equality between Member States. The WTO decision-making processes and dispute settlement procedures [Lee, Romano, 2020] allow us to answer the question as to whether the WTO is a fully autonomous body independent of any individual Member State's influence.

Human rights protection in the WTO legal order

Human rights protection is treated as the most important achievement of contemporary international law [Wuerth 2017: 285; Martinez 2012 : 221-240; Martinez 2012]. The issues of human rights protection and international trade law are related to [Lorenzmeier 2015:147; Koul 2018: 603-610; Schefer 2019: 81-113; Joseph 2016: 465] and do not function in isolation from each other [WT/DS2/AB/R paragraph18]. This approach is relatively new as in previous decades they constituted separate research regimes [Chen, I-Ching 2018: 13]. Concepts such as human rights or the rights of individual simply do not arise in the text of the GATT 47. This results from the fact that the WTO was set up as a specialist trade organization. It seems that there are two basic reasons for this. The first refers to different methods of adopting legal norms and the second is connected with the range of the subject. Human rights were quickly codified without raising substantial discrepancies in its fundamental character. They are wide ranging as they touch on each and every part of life and are intrinsic to the individual. By contrast, the WTO regulations arose during numerous Rounds of arduous negotiations between Member States over a period of many years. They comprise trading rights and therefore are limited to the scope of the subject [Ziemblicki 2013: 24-25]. In principle (with the exception of intellectual property rights) Member States benefit from them and not individuals.

Before the Second War World human rights were treated as an element of a nation's sovereignty. It was not until after the experiences of occupation that international law begun to promote this area of the law. In the 1990's, when the GATT was transformed into the WTO and gained an extended scope of activity, the process began of paying attention to the ties which bind trade and human rights [Szwedo 2020]. The justification for this was the search for a balance between increasingly strong processes of trade liberalisation and

their negative influence on the individual. Currently this relationship can be researched in the philosophical and normative fields. The philosophical perspective attempts to answer the question as to whether these two types of international regulations have the same aims and if so to what extent. The normative aspect is connected with the mutual relations between trade and human rights and whether all human rights norms are likely to be hierarchically superior within international law to WTO law [Joseph 2016: 449-463; Beiter 2016]. The most important internationally recognized legal acts which regulate human rights are: the Universal Declaration of Human Rights adopted by the UN General Assembly on 10 December 1948 [Universal Declaration] as well as the International Covenant on Economics, Social and Cultural Rights [International Covenant on Economics] together with the International Covenant on Civil and Political Rights [International Covenant on Civil and Political Rights]. The latter were adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. The laws included in these legal acts are diverse, they are of a general character and due to this can be interpreted in a wide manner. Hence it is difficult for them to have a direct influence on the interpretation of specific WTO regulations [Marceau 2002: 768]. In principle human rights related to trade are treated as distributive rights, i.e. economic, social and culture rights. Based on legal act criteria these rights can be categorized: The Universal Declaration includes the right to an adequate standard of living (Article 25), the right to rest (Article 24), the right to work (Article 23), the right to take part in government (Article 21) and the disputable right to trade (Article 3). The International Covenant on Economics, Social and Cultural Rights covers [Human Rights for all 2015: 3-40] the right to self determination to pursue economic, social and cultural development (Article 1), the right to work (Article 6) and the right to form and join trade unions without restrictions (Article 8). The International Covenant on Civil and Political Rights covers the right to an adequate standard of living, including adequate food, clothing and housing (Article 11), the right to enjoy the 'highest attainable standard' of physical and mental health (Article 12) and the right to take part in cultural life (Article 15).

There are no WTO Agreements, which formally relate to the issue of human rights. The Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is neither directly mentioned nor referred to in its texts. Consequently, it is practically impossible to employ trade measures while treating them as privileges and freedoms of the individual based on the general principles of the functioning of the WTO.

On the one hand, there is no doubt that free trade is a factor which strengthens citizens' political rights, so the liberalization of trade benefits human rights and fundamental

freedoms. On the other hand, this process is not sufficient to act as a protective measure in the forum of the WTO. This aim can be achieved through further incorporation and the enhancing of good governance principles, which cover transparency, participation and accountability [Denkers, Jagers 2008]. In 2010 the WTO Director Pascal Lamy stated [Lamy, 2010] that "human rights and trade are mutually supportive. Human rights are essential to the good functioning of the multilateral trading system, and trade and WTO rules contribute to the realization of human rights" [Joseph 2013: 857]. This relationship can be interpreted from the Marrakesh Agreement, the GATT, the GATS and the TRIPS. Norms serving the protection of human rights were concluded in auxiliary agreements although they do not constitute separate grounds of adjudication.

Article XX of the GATT has the most crucial significance on the WTO [Jaśkowski 2013] when considering the protection and promotion of human rights. It includes justified exemptions on trade concerning the protection of non-economic interests and its main purpose is to safeguard a domestic economy from the negative effects of market mechanisms. The catalogue set out in Article XX has ten items and constitutes a numerus clausus. From the prospective of protecting human rights, the following are particularly significant: (a) the protection of public morals, (b) the protection of human, animal or plant life or health, (e) the product of prison labour, (g) the conservation of exhaustible natural resources and (f) the protection of national treasures of artistic, historic or archaeological value. This catalogue is not uniform for individual values. The text of the GATT contains the statements that exceptions are for example (a) necessary to protect public morals, whereas others are imposed for the protection of national treasures. Problems arise from this discrepancy, as it is impossible to expect from each Member State of the WTO in the situations mentioned above the same kind or degree of connection or relationship between researched measures and a protective value [WT/DS2/AB/R paragraph 18]. Consequently, the catalog should be treated as a source of general guidelines and not as a restrictive interpretation. It is subject to the clarifications of the Panels and the Appellate Body in each and every individual case which means that whether the WTO guards human rights is de facto decided by adjudicative bodies. In the US-Gasoline [WT/DS2/AB/R, paragraph 30-31] and US-Shrimps [WT/DS58/AB/R paragraph 60, 62] cases the Appellate Body described the nature and purpose of Article XX based on a balance between a general regulation and an exception i.e. maintaining an equilibrium between the liberalization of trade and other protective values.

2.2. The EU

The EU as an international organisation

The concept of the current EU is viewed as the greatest institutional achievement of the 20th century. Its genesis reaches back to the aftermath of the World War II [Pabis 2020] and results from a growing and urgent tendency amongst nations destroyed by the conflict to integrate. In 1946 Winston Churchill, the former Prime Minister of Great Britain, initiated the concept of the establishment of a "United States of Europe". The aim of this project was to maintain peace in the region and to prevent any future armed conflict on the continent. As a first step to realizing this aim, six countries of Western Europe (Belgium, France, the Netherlands, Luxemburg, the Federal Republic of Germany and Italy) signed a treaty to create the European Community of Coal and Steel [ECCS] on 18 April 1951. The fundamental philosophy behind this undertaking was to prevent a future conflict between France and Germany by making this materially impossible. This was to be accomplished by supervising and integrating the production of coal and steel in Germany (concentrated in the Ruhrgebiet and Saarland) and the iron industry in France (centred on the region of Lorraine). This Treaty was signed for 50 years and in 2002 it expired.

The process of cooperation, which had already begun truly started to gain momentum through the inclusion of new areas of regulations and geographic expansion. Buoyed by their success, the founding fathers of the European Coal and Steel Community [ECSC] made further steps to intensify economic and political integration. In the pursuit of this aim, two new treaties were signed in Rome in 1957: The Treaty establishing the European Economic Community [EEC] and the Treaty establishing the European Atomic Energy Community [EUROATOM; McDonald, Dearden 2005; Jarausch 2015: 506-532]. The underlying aim of the EEC Treaty was to lift trade barriers between Member States in order to ultimately create a common market [McCormick 2008: 31]. For the signatories of the Treaty coherent economic development, steady growth, greater stability, increased living standards and closer ties were absolute priorities. EUROATOM was set up as a common instrument of control and coordination of the civil atomic energy industry. Indeed, it only took 10 years from its setting up for the Treaty establishing the EEC to abolish customs duties between Member States, which led to a significant increase in trade between them. A common system of customs tariffs imposed on third party states was introduced together with a common trade policy. A turning point came with the conclusion in 1986 of the international agreement called the Single European Act. This Act modified the Treaties of Rome and formally combined three Communities (although they continued to retain their own legal entity). The Single European Act ushered in rules of cooperation in

the fields of economic, monetary and social policy, scientific research and development as well as protection of the environment. The Single European Act stipulated that the construction of a common European Market with the core values of the free movement of goods, services, capital and people at its centre was to be completed by 1992.

Changes in the world order caused by the fall of the Berlin Wall and the reunification of Germany gave further impetus to deeper cooperation between Member States. As a consequence of this a new stage in the process of integration was heralded by the signing of the Maastricht Treaty on the European Union in 1992. From that moment the EEC Treaty, the ECSC and EUROATOM came under the auspices of the newly formed EU. In addition to economic cooperation between Member States, a common foreign and safety policy as well as a joint policy in the area of justices and internal matters were also incorporated. The EU set the aim of adopting a common currency and the creation of an economic and monetary union from the 1 January 1999 as the highest level of economic integration. The institution whose role was to carry out these aims and was tasked with the introduction of a common monetary policy to guarantee stability in the region was the European Central Bank (ECB).

The next period in the development of the EU was the adoption of the Treaty of Amsterdam in 1997. Its aim was to ensure a legal framework to facilitate the accession of new Member States. Apart from institutional issues, the Treaty of Amsterdam increased EU competences with regard to justice and home affairs together with a common foreign and safety policy. In 2001 the Treaty of Nice was adopted to enable a smoother accession of new Member States. It reformed the EU institutional and legal system and introduced a new voting system (qualified majority) in the Council of the EU.

As the Treaty Establishing a Constitution for Europe [the Treaty Establishing a Constitution for Europe] was rejected by Member States in 2004 its leaders decided to adopt a new treaty modernizing the functioning of the EU in Lisbon in 2007 and the Treaty on the Functioning of the European Union came into effect in 2009 [the Lisbon Treaty]. Its main achievements were the abolishment of the European Communities and the establishment of the EU as a legal entity. The Treaty of Lisbon, as part of organizational reform introduced a clear division between institutions, organs and other organizational entities. It also gave effect to the Charter of Fundamental Rights of the European Union (the

Charter)[5] which is one of the most significant tools used to protect basic rights on a regional level.

Axiology of the EU

The process of building an integrated Europe begun in the 1950's was based on a different set of values than that, which is currently promulgated. This is due to the fact that the Communities (apart from the ECSC) were never designed as final institutions with a determined destination. The historic framework can explain why the economic character of the ECSC Treaty, the EUROATOM and The EEC Treaty has to a great extent determined their axiology. Thus, the fundamental values have been augmented by a striving towards an institutionalised interstate cooperation, the maintenance of peace, freedom, social and economic development, the peaceful use of atomic energy and the construction of a common market. It is worth remembering that no system of values is static and homogeneous. The frequent reforms of today's EU have contributed to changes in the character of the integrational grouping and its functioning in the international arena. In the wake of these changes the system of values has progressed and has remained in a constant state of evolution. Nevertheless, this does not mean that it has moved away from the ideas, which formed the basis of interstate cooperation. On the contrary, they are still current and valid and their range has been extended. The set of values introduced by the Lisbon Treaty and which the European Union is based on was stated in Article 2 of the Maastricht Treaty and details the so-called European identity i.e. human dignity, freedom, democracy, equality, the rule of law and respect for human rights [Łętowska 2010: 48], including the rights of persons belonging to minorities. In principle, this set of values can be viewed as a closed catalogue as no other regulation can be extended, although many Articles of the Maastricht Treaty refer to it [Sozański 2012: 162].

Such a wide range of values serves as proof that the EU is not only an economic and political union but also one of shared values. Indeed the idea of the EU is something more than a community of nations as it is also a community of citizens. This is described in Article 6 of the Maastricht Treaty, which defines the values set out in the Charter as e.g. dignity, freedom, equality, solidarity, non- discrimination and the rule of law [Blanke, Mangiameli 2013: 288].

[5] The Charter of Fundamental Rights of the European Union was signed in 2007. Its binding effect was granted by the Lisbon Treaty.

Basic principles of the EU

In contradistinction to the WTO, the principles of law, which the EU is based on constitute extremely complicated material. This results from their character and the fact that they do not have a written, rigid framework. In practice, this engenders two problems: first, the place of general principles in the hierarchy of legal sources is a moot point and second there is no certainty that in a given situation a general principle is already present or not. In effect, the set of principles is diverse, dynamic and still open. In the EU law values mirror principles with the latter having their own specific nature and playing a much larger role than in any other legal system.

Legal principles of the EU differ in their range, character, status and effectiveness [Tridimas 2007: 1-577]. They fulfil three fundamental functions: to interpret regulations, to act as a legal standard and to fill loopholes. They do not derive only from primary and secondary law, but also from the legal regulations of Member States and international law. Their existence can always be confirmed by rulings of the Court of Justice of the European Union (CJEU) [Sozański 2014: 115]. Amongst the different criteria of principles one can divide them into the principles of the founding treaties, the principles of the EU system , the principles of the EU legal order, the principles of sectoral rules and the principles affecting human rights. Another typology of the principles of the EU law comprises principles of the EU system, principles of the structure and the general principles but within the borders of each category it is possible to make a further division.

The principles of the EU legal order are treated as institutional as they are crucial for the legal foundation and functioning of the EU. They do not constitute a unified category and they are presented in different ways in the doctrine. The principle of priority of EU law over the domestic law of Member States together with the principle of the direct effect, the principle of solidarity (loyalty), the principle of subsidiarity and proportionality as well as the principle of close cooperation are included here. In the framework of the principles of the EU system one can separate the principle of conferral and the principle of institutional balance and institutional autonomy.

Due to the integration of EU and WTO law, the principle of direct effect plays an important role. It answers the question of whether the WTO provisions are direct applicable in the EU legal order. According to the GATT, there is such a possibility that it is an exception to the general principle that the EU Court cannot review the legality of the acts of the EU institutions in light of whether they are consistent with the rules of the WTO agreements. This general rule is limited to doctrina Fediol [Case 70/87] and

Nakajima [Case C-69/98]. According to Fediol, the WTO has direct effect where EU law pertains directly to it and incorporates it in that way. Nakajima, on the other hand, allows the assessment of secondary law in relation to the provisions of EU law, as long as the provisions of EU law are aimed at the performance of obligations. Nakajima statement has been recently limited in Rusal Armental [Case C-21/14] and Puma and Clark [C-659/13& C-34/14]. Here, the analysis of the Court is not limited to the assessment of the legislator's intentions, but verifies whether the provisions of secondary EU law have their counterpart in the WTO parity which it will transfer. Such an approach of the Court indicates a more restrictive approach to the synchronization of the provisions of the EU and the WTO.

Vary rarely does the concept of general principles appear in the texts of treaties. Nevertheless, it is necessary to keep in mind that these principles are firmly anchored in the treaties and are only exploited by the adjudicative process of the Luxembourg Court [Biernat 2006: 1-197]. However, general principles were clarified in the text of the Treaty of Lisbon and they are common for all domestic systems of Member States. They were exhaustively set out and cover the principle of the rule of law, the principle of good faith, the pacta sunt servanda, the principle of respecting fundamental rights, the principle of non-discrimination, the principle of compensation for incurred damage and the principle of the right to good administration.

Similarly to the WTO, non-discrimination principle is one of the fundamental elements of the EU and signifies the forbidding of unequal treatment. In the EU law this principle is more broadly understood than in the WTO legal order. Its sources are based in common Member State values and universal human rights such as in the ECHR and EU law. The scope of this principle not only relates to the function of the singular market but also concerns the question of citizenship and protection of individual rights. At the same time, it should be noted that Article 110 of the TFUE stating the prohibition of tax discrimination on imported goods mirrors the national treatment clause in Article III of the GATT.

On the other hand, there are no legal regulations about the most favoured nation clause included in the TFUE, which could replicate Article I of the GATT. Similarly, each attempt of the CJEU to introduce such a clause has ended in failure. From my point of view such actions of adjudactive bodies is unjustified in legal sources. However, it could be understood, taking into account coherence and legitimacy of EU tax policy. Should this clause be introduced there is a possibility that the system would collapse.

Human rights protection in the EU legal order

None of the Treaties forming the current foundation of the functioning of the EU has mentioned the issue of human rights. The most probable reason for this is that when the Treaty establishing the European Economic Community was signed, almost simultaneously the ECHR was drafted in the Italian capital on 4 November 1950. This Convention clarified and categorised the most essential values pertaining to human beings [Arnold 2013: 2].

In connection with this, there was no necessity to copy the aforementioned regulations and include them in the Treaties of Rome and Paris, which related to the economy. As the common market constitutes the heart of Europe in the process of integration, the Luxembourg Court has gradually developed judicial decisions in the aspect of the economic freedoms of individuals also in the scope of compatibility of EU law with human rights. Over time the approach of the EU towards human rights has evolved. A milestone was case C-29/69, in which the Court stated that the protection of basic rights is a part of fundamental principles of national law. In practice, two legal orders functioned alongside each other until the Lisbon Treaty came into force. Both were characterized by their own normative regulations and mechanisms for dealing with human rights by independent courts. The first, the Council of Europe in the form of the ECHR together with the case studies of the European Court of Human Rights (ECoHR) and the second, the EU with the jurisprudence of the Luxembourg Court. These legal orders do not function in isolation, but are closely linked [Human Rights – European Union Axiology 2020]. The subject of the ECHR was transferred to EU law thanks to jurisprudence of the Luxembourg Court, which plays a key role in disseminating the universal character of the law and human freedom.

The Charter was adopted in December 2000 during the EU summit in Nice.. For the first time in the history of the EU the Charter constituted a substantive legal document comprehensively covering a catalogue of basic laws, freedoms and principles [Zetterquist 2011: 3; Jacobs 2002: 275-290]. The Charter regulations certainly do not create new competences for the EU and neither do they extend existing ones. The Charter represents a compilation of regulations common for all Member States, which are dispersed over a number of legal documents and enriched by case studies. This is exemplified by Article 51.2, the stand still clause, according to which this Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties. A weakness of the Treaty of Nice was the fact that despite earlier intentions it was not adopted in the form of an international agreement. Being an inter-institutional act of a declaratory nature, it was not binding. This did not enable the creation of a

homogenous system of legal protection within the EU, which would guarantee a stable tool to ensure the rights of the individual [Perisin 2006: 69-98]. Due to the position of the Lisbon Treaty, the Charter has been significantly strengthened. The Charter is formally an independent document as it was published in the Official Journal of the European Union and was not included in the final act of the Ministerial Conference. Although the Treaty of Lisbon did not incorporate its contents, it did make it binding on an equal level with primary law . This results from Article 6 of the Lisbon Treaty which altered Article 6 of the Maastricht Treaty, stating that The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The subjective scope of the Charter does not only protect citizens of the EU but all individuals on the territory of the EU. Despite the fact that the regulations do not specifically cover legal entities, in particular cases they can refer to the Charter's norms. This creates a wide ranging system which encompasses a much wider scope of law than the jurisprudence of the Luxembourg Court. The objective scope includes all categories of individual rights i.e personal, political, social, cultural and economic rights and freedoms. The Charter is composed of a Preamble and 54 Articles divided into seven titles, which are linked to values-ideas of particular importance for the EU. They are: Title I Dignity, Title II Freedoms, Title III Equality, Title IV Solidarity, Title V Citizens' Rights, Title VI Justice and Title VII General Provisions.

As the Charter is the result of a far-reaching compromise, in practice it engenders many problems of interpretation. Its regulations create a certain autonomy including in a terminological sense (a different meaning of principles and rights) and although they are in accordance with the ECHR, they are not harmonized with the Lisbon Treaty and the Maastricht Treaty. The Charter has been criticised for, among others, insufficient references to Christian values in its Preamble, and an overly developed catalog of rights especially social ones, too many generalities and a lack of coherence. Despite its name, the Charter does not only concern basic rights but it also covers those principles which do not constitute a clearly defined separate group [Banaszak 2020]. The greatest weakness of the Charter is its silence on the relationship of the Charter to the ECHR. This deficiency means that occasionally the Charter replicates norms contained in the ECHR and sometimes modifies them. Each of these cases brings a certain danger in that the Luxembourg Court and Strasbourg Court could rule in a different way basing the decision on analogical or distinct provisions [Banaszkiewicz 2010]. This would be a highly undesirable situation

taking into account the fact that these regulations pertain to one European legal system. In the process of regionalization, efforts must be made to strive to a legal integration and not diversification.

3. Conclusion

The contents of this article have been presented in a manner typical for legal analysis, which is specific in a global (the WTO) and in a regional (the EU and the Council of Europe) sense. This juxtaposition facilitates drawing a number of conclusions appropriate for the theory of law. The fundamental research problem derives from taking a stance towards the integration of legal regulations on the global and regional levels. This article has shown that this is both necessary as well as possible. The former is dictated by the fact that WTO law does not synchronise sufficiently with that of the EU. This lack of compatibility results from: the different stages of economic integration of each organization, the different character of legal principles and different approaches to the protection of human rights.

Different stages of economic integration reflect diverse concepts of the market which in turn create dissimilar ideas of economic freedoms. The WTO considers that what is not prohibited is allowed. This principle is valid in areas such as preferential trade agreements and customs unions. The priority of the WTO is to liberalise trade, which is treated as a means for economic development. By contrast, in the EU a single market is in the process of being created which represents a higher level of integration. The market is treated as a common good thanks to which Member States can closely cooperate economically and politically. This synergy depends on positive (the harmonisation of regulations) and on negative (the abolishment of barriers to ensure the smooth functioning of the four free movements) integration. EU law is rooted in the doctrine of direct effect which does not exist except some limited exceptions in the legal framework of the WTO.

The different character of legal principles reflects the other function they fill in each organization. The international system of trade consists of leading principles whose aim is to guarantee fair competition between businesses from different countries. A completely dissimilar concept of the principles of law has been adopted within the EU. This category is extremely complicated and has a character, which although disputable still plays a crucial role in the EU system. These principles can resolve the most demanding issues, fulfilling the functions of integrating and harmonising legal systems, removing conflicts in norms and addressing legal loopholes.

Different attitudes to protection of human rights reflect the specific creation and application of law. There is no mention of this subject in the text of the WTO Agreements, however this does not mean that it has been overlooked. Free trade is a factor supporting human rights but lacks the required tools for its protection in the WTO forum. EU law expresses principles of direct effect and primacy. It ensures freedom and human rights by including the ECHR and the Charter into the scope of EU law.

The political and economic aims of establishing each of the organizations have similar characters. Both the WTO and the EU were created as a consequence of rebuilding economies affected by the destruction of the World War II. Therefore, it can be said that their common denominator is to achieve world peace and economic development. Doubtless the aims of the EU are much broader than the aims of the WTO which is justified by the individual nature of each organization. However, from my point of view there is a need to synchronise legal norms of the WTO and the EU. This is possible because of the principle of non-discrimination and the concept of the protection of human rights, which are valid in both systems.

In functional terms, the principle of non-discrimination has a different role, but nevertheless it is the core of regulations both globally and regionally. In the WTO law, the principle of non-discrimination is treated as a tool to combat state protectionism, while in the EU law it is used to avoid competitive distortion. The chance of synchronizing the WTO and the EU regulations increases due to the protection of human rights under the ECHR. This concept is universal, therefore, through judicial decisions, it can extend not only to the EU regulations, but also the WTO Agreements.

The hypothesis, that process of integrating the EU and the WTO is possible is approved, but it must be highlight that it is difficult to expect that such a solution will be entirely possible. It depends on many factors. In the article, they were taken to a very limited extent to give rise to the future discussion. Nevertheless, the integration of law could be created in stages. The idea of creating law only on the basis of legal texts turns out to be flawed. Therefore, judicial decisions may play a key role in this regard. It is hard to imagine that the Member States of the WTO and the EU will voluntarily agree to harmonize their legal systems. However, the dialogue between judges of the WTO Panels and the Appellate Bodies, the Luxemburg Court and the (ECoHR) creates opportunities for better compatibility of legal orders and a more flexible process of the introduction of laws. This dialogue should concern the interpretative aspect (interpretation of the law) and the institutional aspect (examining the relationship between legislative institutions and assessing their operation in terms of their legal role).

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