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Research Article

Humanization of International Law as Seen in The Example of International Economic Law (Economic Legal Order)

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Abstract

Despite the fundamental influence and multidimensional impact of the phenomenon of humanization on international law, the concept of humanization of international law has not been subject to quantity-wise extended analysis by legal scholars and commentators. As much as T. Meron's findings addressing the humanization of international law *explicite* have inspired a broad scholarly discourse in the literature, research focused on the impact of humanization on particular branches of international law remains overwhelmingly in minority. International economic law, also called economic legal order, is one of the branches which hold the status of the system of the law - international law. Although categories such as "law", "legal order" or "system of the law" do not have an equal scope of reference, linguistic distinctions between them do not have major significance in this study. However, in their assumptions devoted to the system of international law as such and international (including EU) economic law as the former's component, they outline the background of reflections. The discussed humanization of international law, in general terms, revealing the impact of human rights on international law and thus outlining the area of research and bringing its scope onto international ground, is a specific binding link between these analyses. The essence of humanization of international law *per se* is a substantive justification of leaving out the subject-matter of internal law in this study. Referring to the above, the adopted research methodology, proceeding from the general to the detail, with a particular emphasis on the case study (international (including EU) economic law), leads one to assume that the main aim of this study is to demonstrate the influence (impact) of humanization of international law on the international economic order. The culmination of the research involves the formulation of the research hypothesis according to which, humanization in the context of international economic law should be examined in two dimensions, as humanization of law and humanization in the law. The introduction of these categories is a *novum* in the current research, addressing this subject-matter, and the verification of the hypothesis outlines the scope of observations carried out on the basis of the analytical method and the method of interpretation of the applicable law.

Keywords: International (EU) Economic Law, Economic Legal Order, Humanization of International Law, Human Rights.

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Introduction

Despite the fundamental influence and multidimensional impact of the phenomenon of humanization on international law, the concept of humanization of international law has not been subject to quantity-wise extended analysis by legal scholars and commentators. As much as T. Meron's study (Meron, 2006; and also earlier: Meron, 1989; Meron 2000), addressing the humanization of international law *explicite,* has inspired a broad scholarly discourse in the literature, research focused on the impact of humanization on particular branches of international law, for the needs of this study understood as such sets of legal norms, which by being identified due to the subject of regulation, govern a specific area of community life, remains overwhelmingly in minority. To simplify, branches of international law understood in such a way, in summary analogies of internal law branches, constitute basic elements of the system of international law, which *a priori* imposes on them a status of sub-regimes in the system of international law.

International economic law, also called economic legal order, is one of the many branches of international law (apart from the above-mentioned international humanitarian law) which with no doubt meets the above criteria. Although categories such as "law", "legal order" or "system of the law" do not have an equal scope of reference (Lang, 2008, p. 13; Wasilewski, 2004, p. 47; Gourgourinis, 2011, pp. 996-997), linguistic distinctions between them do not have major significance in this study. However, in their assumptions devoted to international law as such and international (including EU) economic law as the former's component, they outline the background of reflections. The discussed humanization of international law, in general terms, revealing the impact of human rights on international law, and thus outlining the area of research and bringing their scope onto international ground, is a specific binding link between these analyses. The essence of humanization of international law *per se* is a substantive justification of leaving out the subject-matter of internal law in this study.

Referring to the above, the adopted research methodology, proceeding from the general to the detail, with a particular emphasis on the case study (international (including EU) economic law), orders one to assume that the main aim of this study is to demonstrate the influence (impact) of humanization of international law on international economic order, at the same time, confirming or falsifying the research hypothesis according to which, humanization, in the context of international economic order, should be examined in two dimensions, as humanization of law and humanization in the law. The introduction of these categories is a *novum* in the current research addressing this subject-matter, and the verification of this hypothesis will outline the scope of further observations carried out on the basis of the analytical method and the method of interpretation of the applicable law.

Humanization of international law and humanization in international law - semantic distinctions

As signalled above, the subject-matter of the humanization of international law has been addressed, on the one hand, in the shadow of research on general international law (The Impact, 2009; Pronto, 2007, pp. 753-765) and on the other hand, on the role human rights play in it (examples here are provided, for instance, by general courses at the Hague Academy of international judges by B. Simma (Simma, 1993), T. Meron (Meron, 2006) or A. A. Cançado Trindade (Cançado Trindade, 2014, especially the chapter addressing The Humanization of International law, pp. 99-196; Cançado Trindade, 2013) and secondary publications of the same authors), due to the concept of fragmentation of international law or even its constitutionalization, i. a. on the forum of the International Law Commission (Report of the Study Group of the International Law

Commission, 2006; Ajevski, 2014, pp. 87-98). Without going into an in-depth analysis, legal scholars and commentators have attempted to outline the function of human rights in the development of international law, which, by running in parallel with the sets of unrelated legal norms of the system of the law, leads to a change in the structure and nature of the current international legal order. In T. Meron's approach, it is norms and institutions concerning human rights that brought about a revolution in the system of international law, radiating onto other branches (Meron, 2006) and confirming that human rights law is part and parcel of the general law (Pronto, 2007, p. 764).

The review of ways of approaching the humanization of international law carried out for the needs of this study reveals that the concept of humanization of this law is presented in the following semantic contexts, which - by ordering - may be approached *sensu largo* and *sensu stricto*.

In the first approach, the humanization of international law to a smaller or greater degree is associated with the constitutionalization of this law. However, it must be reserved at the outset , that if the constitutionalization of international law were to be identified only with the process aiming to adopt a constitution as an act of fundamental importance to a legal system (which from the international law perspective, would have to entail, attributing the Charter of the United Nations signed at San Francisco on 26 June 1945 (United Nations, 1945), the status of a constitution of an international community (The United Nations Charter, 2009), the humanization of international law would faintly fit into the discussed approach. The Charter, as emphasized in the literature, in not a constitutional primary source of the entire international law, neither is the entire international law subject to the law-creating control of the United Nations (Doyle, 2009, p. 113). Moreover, international human rights law is based on other regulations than the said Charter of the United Nations. Pursuant to its provisions (specifying in Article 1 the purposes of the United Nations), even though the need to promote human rights and to encourage respect for these rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion was expressed, this undeniably significant, normative category was not elaborated on. It was done in a number of other documents adopted under the auspices of this or other international organizations.

The search for the meaning of the concept of the humanization of the international law, and at the same time, rejecting the above approach to perceive the constitutionalization of this law - as a process aiming to adopt a constitution in the formal meaning - implores reaching for the root of the word "constitution". This word, deriving from Latin *constituere*, in its verb form, means "to arrange", "to order". Adopting this as a basis, the constitutionalization of the international law should be understood as an introduction (collection or ordering) of the rules shaping the system, within which, various constitutional processes harmonize. The humanization of the international law also fits within such a complex of phenomena which in J. Zajadło's approach, are a proof to certain constitutional processes of the international community (Zajadło, 2011, p. 12). It is enumerated along such processes as e.g. an increase in the number of *ius cogens* norms and *erga omnes* obligations, a hierarchy of the international law or signing international agreements of the nature of a mini-constitution (Widłak, 2010, pp. 53-54). In this meaning, the theory of humanization can be seen as contiguous or, to a certain extent, complementary to the other relevant 'big' theory, namely, the constitutionalisation of the international law (Tzevelekos, 2013, pp. 62-63).

Speaking of rules shaping the system, presenting human rights within the framework of the concept of humanization of international law is particularly important. Human rights, being a source of unity of the international law system, affect this system in a shaping manner. On the one hand, classified as part of the general

international law, they confirm the systemicity of this law, and on the other, they reflect the role and significance of the general principles of law (including the principle of respect for human rights), which by specification, are applicable in individual branches of the international law, strongly affecting these branches and combining them into a cohesive whole. In this approach, individual sub-systems of the international law are, both substantively and formally-legally (systemically), immanently related to this law.

This last observation points to the second semantic context of the humanization of the international law suggested above - the *sensu stricto* context. Within this context, the humanization of the international law is nothing more than a radiation, impacting or transferring legal-human regulations to other branches of international law. For example, V. P. Tzevelekos sees humanization in this way, highlighting that "in the theory of the humanization of the international law, [one can observe] a narrative purporting to depict 'the law as it is', that is, to identify the ways positive international law is changing because of human rights, to capture the evolution that its humanization has generated and, mainly, to illustrate the influence the latter has on the international legal order" (Tzevelekos, 2013, p. 63).

However, it is difficult to stop at a statement that the impact of human rights on other branches in the international law, occurring within one system of the law, proceeds in a one-way trend. The occurring noticeable feedback is described by M. Özkan Borsa who points out that the international public law influences human rights and humanitarian law, but these two fields also have a reforming effect on the public international law which even extends to its other subdisciplines (Özkan Borsa, p. 83-84). It is impossible to separate, within one system of the law, between the impact the legal norms of the system have both on one another and on the common part, that is the general international law.

Summing up the above findings, it needs to be noted that the essence of the humanization of the international law cannot be understood by narrowing the concept of humanization of this law only to one of the indicated semantic contexts. Therefore, it may be proposed as a postulate that one should see humanization, which in its essence is a process, a state and a phenomenon, on the one hand as an impact of human rights on the system of the international law which, by shaping this system, binds it into a whole (humanization *sensu largo* - humanization of international law), and on the other, as an impact which aims to introduce legal-human regulations (humanization *sensu stricto* - humanization in international law) to individual branches of the international law (that is specialized sets of legal norms), taking into account the jurist nature of these branches.

Humanization of international law and humanization in international law versus international (including EU) economic law

Being a domain of the current international law, the specialization of this law occurring in parallel with a multifaceted development of international relations in specific areas of community life, has led to the shaping of the international economic law as a branch of the international law. This branch is characterized by a far-reaching specific nature (Menkes, 1988, pp. 21-23), translated into difficulties in defining the concept of the international economic law. Leaving them out of the scope of these reflections, one needs to conclude that due to the criterion of norms' origin, the legal international economic order is composed of "all the norms governing economic affairs as long as their basis is in the sources of a law of an international nature, irrespective of what entities between which they regulate relations" (Białocerkiewicz, 1987, p. 43). Even though the definition raises some controversies (for example one may encounter a thesis according to which, the international economic law includes norms regardless of their origin as long as they regulate international economic relations

(Ziemblicki, 2014, p. 183), as seen in the example of the international economic order, the assumption that it is the person and his needs (i.a. those of an economic nature) that should be the subject of protection from an international legislator, is emphasized in a particular way. The issue tackled here is about a material legal order only in the context of the international law, including also the European law as a separated law due to its regional scope of application of legal norms of the legal order. Remembering that the law of the European Union is the most universally cited exemplification of the latter, the EU economic law *in extenso* fits within the above definitional determinants.

Legal norms creating human rights are an immanent part of any legal order. Noticing currently the rank of economic rights (as second-generation rights), one does not depreciate in any way fundamental rights (forming first-generation human rights) to which economic rights are a specific supplementation with another dimension, i.e. a dimension that can be translated into the human material existence within the so-called states' positive obligations. However, there is no doubt that both from the perspective of the system of the international law and from the perspective of its individual components - branches of this law, human rights (including those of an economic nature) are a collection of legal norms that have a special meaning. The dual character (proposed above) of perceiving the humanization of the international law allows looking through the lens of human rights not only at the international law as (humanization *sensu largo*), but also at the individual branches of this law, including the international economic law (humanization *sensu stricto*).

In the first of the outlined contexts, human rights, that are forming part of the general international law, are reflected in numerous legal international acts. Narrowing the enumeration down to those which directly include economic rights, one can undoubtedly point to the International Covenant on Economic, Social and Cultural Rights signed at New York on the 16th of December, 1966 (UN General Assembly, 1966). The catalogue of economic rights included in it covers i.a.: the right to work and the right to decent remuneration (Article 6 and 7 of the Covenant), the right to strike and to form trade unions (Article 8 of the Covenant) or the right to an adequate standard of living (Article 11 of the Covenant). Although the provisions of the Covenant, which form part of the achievements of the United Nations, are not a *novum* in this scope, they are attributed a leading role in shaping the described category of human rights. Duplicating regulations already known to the international community from the European Convention for the Protection of Human Rights and Fundamental Freedoms signed under the auspices of the Council of Europe on the 4th of November, 1950 (Council of Europe, 1950), the Covenant introduced the so-called sectoral protection according to individual categories of human rights.

In the light of the above, it can be noticed that the contemporary international law does not stray away from human rights (including economic rights) whose main beneficiary is the person - individual. Therefore, it is not surprising, as pointed out by T. Meron, that the humanization of the public international law under the impact of human rights has shifted its focus above all from being state-centered to individual-centered (Meron, 2006, introduction, p. 1). This shift towards the individual is even more expressly described by Z. Drnas de Clément who writes that "by centralizing the human being as a point of concern and calling for the humanization of international relationships, a new international thinking gives relevance to the human being and the role of the individual in the fulfilment of international law principles" (Drnas de Clément, 2010, p. 407). This thought fully reflects the essence of the process of humanization of the international law, making the category of human rights not only a part of a law common to all its branches, but also a binding link of the system of the international law.

In the second approach to the context, it is worth noting the fact that apart from the

international economic law "using" the general international law and human rights inscribed in its scope (in this meaning, these rights of a general nature), it is primarily a branch of the international law in which, one can observe the phenomenon earlier called the humanization in law. This phenomenon is revealed in a particular way in the context of the EU economic law. What is interesting, initially the European Communities and also the European Union, since 1992, did not take up the legal-human subject-matter in their treaty provisions, adhering to a general statement that they are based in their functioning on respect for human rights, contributing to their protection. However, the development of this legal order, demonstrated even in signing the Treaty of Lisbon, at Lisbon on the 13th of December, 2007, amending the Treaty on European Union and the Treaty establishing the European Community along with the annexed Charter of Fundamental Rights (O. J. C 306, 17.12.2007, p. 1–271) caused the subject-matter of human rights to permeate on the normative ground of the European Union. For example, in Article 16 of the Charter of Fundamental Rights, the freedom to conduct a business was proclaimed, and in Article 36, the access to services of a general economic interest was guaranteed. If additionally one were to take into account that "fundamental rights of citizens of the European Union were considered an integral part of the general rules of the community law, among which, protection of privacy, ownership right, freedom of choice and performance of a profession, and economic freedom are of particular importance" (Cieśliński, 2009, p. 16) then the fact that the EU economic law did not stop only at using the legal-human regulations forming part of the general international law, but by rather extending the catalogue of these rights, they were adapted to its needs, which gives great importance for the research hypothesis formulated in the introduction. Then analysing the structure of the described legal order, in the legal-human scope, one needs to conclude that it includes not only "general human rights", but also rights which, through this order, were shaped somehow for their own needs, at the same time reflecting the attribute (specific nature) of this order. The rights in question (like the right of access to services of a general economic interest) are an expression of far-reaching specialization of the EU economic law.

Conclusion

The above findings allow a look at human rights as a source of unity of the international law (Cohen, 2012, p. 382), at the same time concludes that human rights have given an entirely new human face to what has traditionally been a sovereignist legal order (Tzevelekos, 2013, p. 75). Without a doubt, the above-mentioned "human face" of the international law is a consequence of the dually understood humanization of the international law (humanization of law and humanization in the law), reflecting the order's legal and international development. It is enough to remember that initially the subject-matter of human rights was reserved only to national legislations. Thus transferring it (after World War II) into an international ground cannot be left underestimated also on the ground of research, proving the unquestionable development of both the international law itself and its legal-human subject-matter under the rule of this law.

Looking at human rights dually as a component of the general international law and as a component of individual branches of the system of the international law (including the international economic law undertaken as a case study), it is possible to confirm the research hypothesis posed in the introduction, according to which, humanization - in the context of this legal order -must be perceived as humanization of law and humanization in the law. On the one hand, human rights (including those of economic nature) shape the system of the international law, combining it into a whole under the general international law (humanization of international law). On the other hand, introducing the legal-human regulations to the international (including EU) economic law, taking into account the specific nature of this branch, proves its far-reaching specialization which is a manifestation of humanization in the

international law. Noticing this phenomenon is essential since this specialization implicates further development of this branch, not on the general international law context any more, but on the context of the multiplication of legal norms forming this branch.

The above conclusion fully implements the postulate of the "human face" of the international law, which, especially in the context of economic rights as the international economic law, should protect the human-individual as a beneficiary of these rights and values created by the law. It is the individual juxtaposed with the institution of the state that is an entity protected less, whereas the economic rights and their development under the international (including EU) economic law are a chance to compensate and level away the individual's weaker position.

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