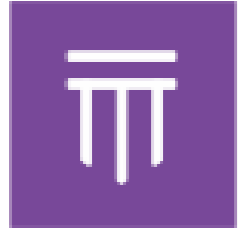


EU law seminar V 8.12.2020



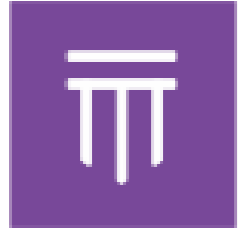
Fundamental Rights in the EU

Dr. Madalina Moraru, Senior Researcher, Faculty of Law, Masaryk University and Centre for Judicial Cooperation, European University Institute, Italy, email: madalina_bianca.moraru@law.muni.cz



EU Fundamental Rights

- What place are HRs given in the EU?
- What are the similarities and differences between the EU and national constitutions as regards codification and role of HRs?
- What is the relation between the various legal sources on human rights in the EU? Name a few of these different HRs legal sources

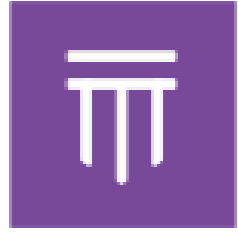


Phases of development of EU Fundamental Rights

- FRs were largely absent from the original Treaties.
- They were embedded in the European Political Community Treaty which did not see the daylight due to the France's refusal to ratify it. This Treaty incorporated the rights and freedoms in the ECHR.
- *This FRs gap became soon a problem for national courts. WHY?*

EU secondary law directly impact on individual rights and in the absence of HRs protection at EU level, they could see their constitutional rights indirectly limited

Phase 1: Stork case – individuals complained against the Community institutions' activities on the basis of domestic constitutional standards - Is this possible?



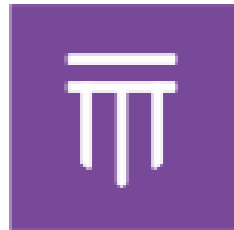
Phase II of Development of Fundamental Rights: judge-made general principles of EU law

Stauder C-29/69

Legal issue: Mr Stauder challenged a Commission decision which made the distribution of butter at reduced prices conditional upon identification of the recipient. Mr Stauder argued that the identification by name breached his right to dignity as protected by the German Constitution. A regional administrative court referred a question to the ECJ to assess the validity of the Commission decision with ‘general principles of Community law in force.’

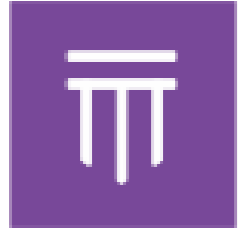
ECJ reply:

- It looked at various language versions of the Commission decision to identify whether the identification by name was required; *how is this type of interpretation called?*
- No such requirement, ‘interpreted in this way the Commission decision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court’.



Conclusions of the ECJ in Stauder on FRs – clarified the nature and effects of EU FRs

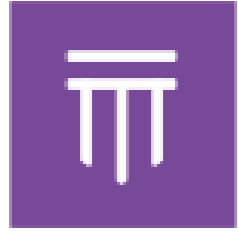
- FRs = unwritten general principle applicable to all acts of the Community institutions;
- Legal force of EU FRs – a Community act adopted in breach of FRs would be declared void;
- Conform interpretation – if more than one interpretation of a Community act is possible the one that does not infringe FRs would have to be adopted;
- ECJ has played a gap filling function for the protection of HRs at EU level.



What are the sources of the EU FRs?

- constitutional traditions common to the Member States (*Internationale Handelsgesellschaft*, C-11/70)
- international treaties for the protection of HRs to which the Member States are signatories, ECHR is the most significant (*Nold*, C-4/73)

Which institution has jurisdiction to assess the compatibility of EU acts with EU FRs?

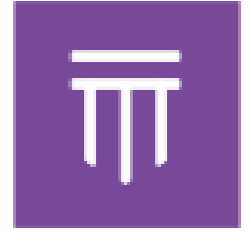


What is the legal force of EU FRS?

1. *Parameter for legality review of EU secondary acts (administrative and legislative)*

All EU secondary acts have to be in conformity with EU FRs, if not they are not legally valid. Such acts would be null even if this would mean the EU is in breach with international law – *Kadi I* ECJ case.

2. *Parameter for legality review of Member States' actions when implementing EU law or acting within the scope of EU law.*



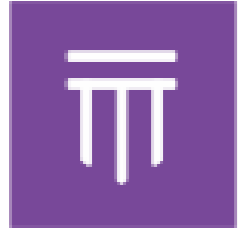
Phase III Development of EU Fundamental Rights codification of general principles in the EU Charter

EU Charter of Fundamental Rights is the Bill of Rights of the EU.

In force since 1st of Dec 2009

The Charter encompasses a broad range of *civil, political, social and economic rights*, together with rights peculiar to EU citizens, such as:

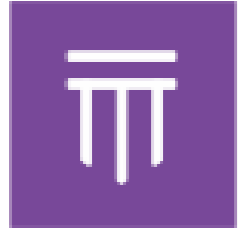
- free movement within the EU,
- the right to vote at elections of the European Parliament and
- the right to equal consular and diplomatic protection in third countries for unrepresented EU citizens



What is the legal status of the EU Charter?

Based on Article 6(1) TEU, the Charter has “the same status of the Treaties”; thus, the Charter ranks at the top of EU law sources, as EU primary law.

What is the relationship between the EU Charter and the general principles of EU law?



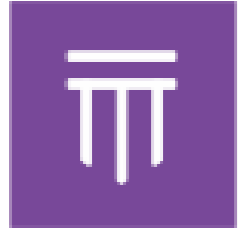
What is the legal status of the EU Charter?

What is the relationship between the EU Charter and the general principles of EU law?

The general principles of EU law are the sources through which the CJEU secured the protection of fundamental rights in the Union legal order, before the Charter.

Article 6(3) TEU confirmed the relevance of the general principles, as a complementary source of protection to the Charter.

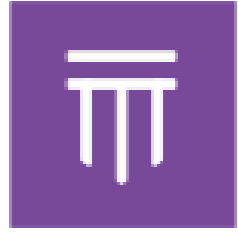
There is a significant overlap between the Charter and the general principles of EU law, however there is no defined hierarchy, nor has the CJEU clarified their relationship



What is the scope of application of the EU Charter ?

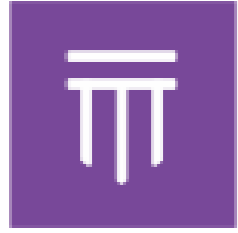
*Art. 51. 1. The provisions of this Charter are addressed to **the institutions, bodies, offices and agencies of the Union** with due regard for the principle of subsidiarity and to **the Member States only when they are implementing Union law**. They shall therefore **respect the rights, observe the principles** and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the **Treaties**.*

2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.



What is the scope of application of the EU Charter ?

1. the Charter applies to two different sets of acts: EU acts and national acts.
Is there a difference in the scope of application between the EU and MSs?
Ledra Advertising – Commission signed a MoU under the ESM – mechanism adopted outside the EU framework.
2. the Charter cannot be relied on to extend the material competences that the Member States decided to confer on the Union through the Treaties (principle of neutrality of the Charter);
3. the Charter encompasses both “rights” and “principles”, with different effects;
4. individuals are not mentioned amongst the passive addressees of the Charter.



What is the meaning of the notion “national act implementing EU law”

CJEU (Grand Chamber) Åkeberg Fransson

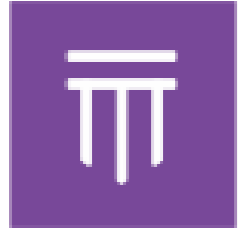
Mr Fransson, Swedish citizen was accused of charges of serious tax offences, including providing false information in relation to VAT. He was subject to both administrative tax penalties and criminal proceedings. He claimed that Swedish law infringed Art. 50 of the EU Charter on the *ne bis in idem* principle.

Member States argued that the Charter does not apply, since the Swedish legislation at issue was adopted before the adoption of the Directive on the common system of VAT, plus the collection of income tax was not harmonised at EU level.

Do tax penalties and criminal proceedings constitute ‘implementation’ of EU law?

CJEU: MSs have an obligation to take all legislative and administrative measure to ensure collection of VAT due on their territory.

Art 325 TFEU obliges MSs to counter illegal activities affecting the financial interests of the EU. Shortcomings in the collection of tax would also determine a reduction in the revenues of the EU.

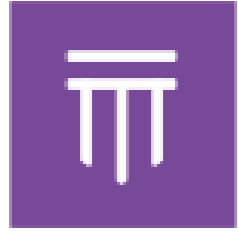


What is the meaning of the notion “national act implementing EU law”

CJEU (Grand Chamber) Åkeberg Fransson:

21. Since the fundamental rights guaranteed by the Charter must therefore be complied with where national legislation falls within the scope of European Union law, situations cannot exist which are covered in that way by European Union law without those fundamental rights being applicable. The applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter. There is no general human rights jurisdiction of the ECJ

22. Where, on the other hand, a legal situation does not come within the scope of European Union law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction.

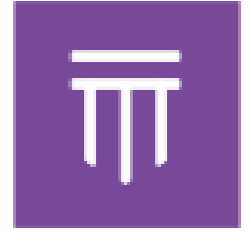


What is the meaning of the notion “national act implementing EU law”

CJEU (Grand Chamber) Åkeberg Fransson

This means that in order to trigger the application of EU fundamental rights, it is not sufficient to claim that the national measure involved infringes one or more of them. There must be a rule of EU primary or secondary law, other than the fundamental right allegedly violated, that is applicable to the main dispute. If such a different rule exists, the case falls within the scope of EU fundamental rights and the national measure in question can be checked against them.

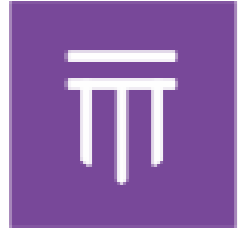
Thus, the CJEU diluted the distinction between “implementation” and “scope of application” of EU law, opting for the broadest understanding of implementation



National procedural provisions that allow for the legal protection, before domestic courts, of the rights conferred on individuals by Union law

Article 19(1), second sentence, TEU, states that “Member States shall provide remedies sufficient to ensure the effective legal protection in the fields covered by Union law”.

Accordingly, national procedural provisions that give effect to the EU primary law obligation laid down by Article 19(1), second sentence, TEU, fall within the scope of Union law, hence, of the Charter, regardless of whether those provisions were adopted with the specific purpose to comply with that EU law obligation

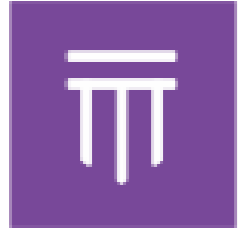


When does a national act «implement EU law»?

Consider these two cases. They both concern national rules that foreclose access to legal aid by legal persons. However, in one case only the Charter is applicable and the national rules concerned can be checked against Article 47(3) of the Charter on the right to legal aid.

ALFA Case: Alfa, a German company working in the natural gas sector, wants to bring an action to establish Germany's liability under EU law. Following to Germany's failure to transpose within the fixed deadline two EU Directives concerning the marketing of natural gas, Alfa underwent major economic losses. Lacking any income and assets, Alfa cannot pay a lawyer and therefore asks to be admitted to legal aid. Nevertheless, according to the German rules, only natural persons can be admitted to legal aid. Alfa challenges these rules before the domestic court.

BETA Case: Beta, a Portuguese commercial company working in the trading of agricultural products, wants to bring a legal claim against Omega, another commercial company established in Portugal, in order to recover a credit for a service provided in Portugal. Nevertheless, Beta lacks any income and assets and cannot pay a lawyer. It asks to be admitted to legal aid, but the request is rejected because, according to the Portuguese rules, only natural persons can be admitted to legal aid. Beta challenges these rules before the domestic court.



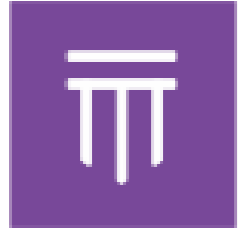
When does a national act «implement EU law»?

The Charter is applicable to the ALFA case, but not to the BETA case. Why?

The legal action that Alfa wants to bring against Germany aims at enforcing a right granted by EU law: the right to have Member States repairing the damages caused by violations of their EU law obligations (such as the obligation to transpose a EU Directive within the fixed deadline). Thus, there is something more than the “mere” claim that a provision of the EU Charter is violated.

By contrast, there is no EU law rule other than the provision of the Charter allegedly violated that applies in the BETA case. All elements of the case are confined within the territory of a single Member State (thus, the Treaty provisions on the free movement of services do not apply), the legal action that BETA wants to bring does not concern a situation governed by EU law, and there is no EU legislation concerning access to legal aid before the Member States’ courts.

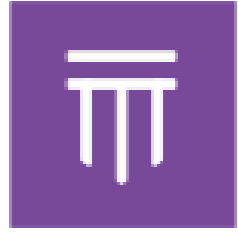
The ALFA and BETA cases are inspired to two real cases decided by the CJEU, respectively Case C-279/09 [*DEB*](#) and Case C-258/13 [*Sociedade Agrícola*](#).



What is the relationship between the Charter and EU secondary law?

- All sub-primary provisions of EU law must be interpreted in conformity with the Charter.
- What happens if conform interpretation is not possible?

Article 267 TFEU or Article 263 TFEU.



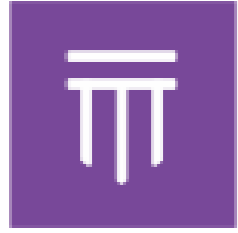
CJEU judgments declaring invalid provisions of EU legislation due to being in conflict with the Charter:

Joined cases C-92/09 and 93/09, Volker und Markus Schecke

- Case C-236/09, Test-Achats ASBL
- Case C-293/12, Digital Rights Ireland

CJEU judgments assessing the invalidity of EU secondary legislation provisions
at the request of national courts:

- Case C-601/15, J.N. – no violation of the right to liberty by asylum detention
- Case C-18/16, K

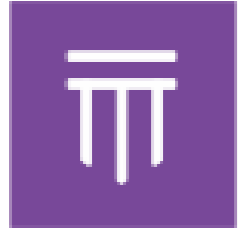


The horizontal direct effect of the EU Charter – Directive

Scope of the Charter is triggered via Directive, can the Charter still be invoked against an individual?

CJEU answered affirmatively at least in some cases, when the Directive details rights also contained in the Charter, then the Charter can apply in full, even if the Directive cannot be invoked against a private party, see Arts. 21 and 31(2) of the Charter

What are the legal effects of the EU Charter on national acts implementing EU law?

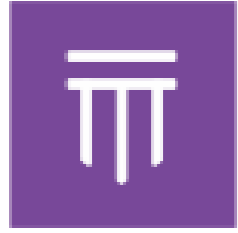


What is the relationship between the Charter and the ECHR?

The ECHR has a twofold relevance under EU law:

1. as a source of inspiration of the general principles of EU law together with the national Constitutions of Member States (see Article 6(2) TEU);
1. as a parameter for the interpretation of the Charter, which shall not offer lesser protection than the ECHR, insofar as corresponding rights are concerned (Article 53(2) Charter).

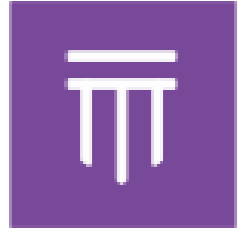
ECHR and EU law



Member States' responsibility before the ECHR:

1. In principle, they cannot avoid responsibility by transferring their sovereign powers to an international organisation
2. The challenged act arises out of the discretion of the MS under EU law – ECHR does not concern EU law
3. MSs have no discretion in the implementation of EU law – e.g. Regulations – national act implementing EU law breaches ECHR – would MSs bear responsibility for these acts?

What is the doctrine of equivalent protection – *Bosphorus*?



What is the relation between the EU Charter and national constitutions

Several authors have embraced various forms of pluralism in order to conceptualize the interaction between legal systems in the EU.

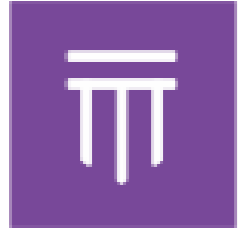
In this pluralist framework, the question is how the interplay between the Charter and state constitutions should be carried out.

In such circumstances, what rights shall domestic courts apply? Does the Charter displace national constitutions following the principle of the primacy of EU law? Or may state courts still enforce constitutional rights when they are interpreted differently from parallel Charter rights?

Answer art 53 charter

But see Melloni and then Taricco II

The underlying rule, however, is the same: In both situations totally or partially determined by EU law, the Charter displaces the constitution as the standard of review when the sacrosanct primacy, unity, and effectiveness of EU law are compromised.



What is the relationship between the Charter and the ECHR?

