

Seminar V – Fundamental rights 7 December, 12.00-13.40

Fundamental rights have first been protected at the national level on the basis of unwritten principles developed since 1960s by the CJEU in its jurisprudence. Only in 2009, has the EU benefited of a written catalogue, legally binding, of fundamental rights. Given that the Charter is a young instrument it includes new developments (so-called second generation of human rights) such as right to consumer protection (Art 38) or the right to conduct a business (Art 16).

Since the entry into force of the Treaty of Lisbon the Charter of Fundamental Rights of the European Union has become a legally binding instrument. Importantly, the European Union is not a party to the ECHR – it should become one in line with Article 6(2) TEU. At the same time the EU Member States are bound to observe the European Convention on Human Rights (ECHR) and the fundamental rights guaranteed in national constitutions. The resulting interaction of the three legal systems is governed by relevant provisions of the Treaty of the European Union (Article 6) and the Charter itself (Title VII), however, the effectiveness of such arrangement from the point of view of fundamental/human rights protection standard depends to a large degree on the ability and willingness of judges to engage in fundamental rights discussions and on the decision makers' due diligence in assessing impact and progress from fundamental rights perspective.

The accession of the European Union to the ECHR would be an important contribution to the consolidation of a coherent and harmonised system of human rights protection across the region. Unfortunately, it will be postponed following the judgement of the Court of Justice of the European Union outlining the criteria under which the accession is feasible (see: Opinion 2/13 of the Court of Justice of the European Union of 18 December 2014 on the EU accession to the ECHR). This means that from the judicial perspective the search for the adequate fundamental/human rights protection standard will continue in line with the previously established practices until the future accession to the ECHR will have been completed.

At the same time, the European decision makers have been developing the wide array of instruments aiming at establishing and complying with fundamental/human rights standards within the European continent. In particular, from the EU perspective, fundamental and human rights have become so important that both internally and externally they grew in concrete policy fields. Over the years, some areas of the two policy fields have turned out exemplary (see for instance the European data protection standard), in others the EU has proven its potential as an international standard setter (see: the contribution to the setting of the review standard for the terrorist listing at the UN level following the *Kadi* judgment of the CJEU).

The different scope of application of the EU Charter for EU institutions, agencies, bodies compared to the Member States' actions.

The EU Charter applies to the EU institutions, bodies, offices and agencies, even when they are acting outside the EU legal framework – see Joined Cases C-8/15 to C-10/15 P *Ledra Advertising v European Commission and ECB*.

EU Charter overcoming the horizontal application limit of Directives. Charter provisions that are both 'unconditional and mandatory in nature' apply not only to the action of public authorities, but also in disputes between private parties. – *Egenberger*, para. 46

Mandatory reading:

- C-29/69 *Stauder*,
<http://curia.europa.eu/juris/showPdf.jsf?text=&docid=87844&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=16938518>
- C-44/79 *Hauer v Land Rheinland-Pfalz*
- European Court of Human Rights, Grand Chamber judgment *Bosphorus*, *Application no. 45036/98*, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%2201-69564%22%5D%7D>
- Opinion of the CJEU on EU accession to ECHR, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62013CV0002> .
- C-617/10 Åkerberg Fransson, ECLI:EU:C:2013:105
- Chapter, Fundamental Rights in the EU in Barnard and Peers EU law 3rd ed (in IS)

Optional

Listen to CJEU President Koen Lenaerts keynote speech with the occasion of the 10 years celebration for the entry into force of the EU Charter
<https://www.youtube.com/watch?v=THotpRyHbn0>