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Justiça



Justiție

FUNDAMENTAL RIGHTS



European Commission
Justice

Introduction

- The current situation of fundamental rights - the outcome of a lengthy historical, legal and political process.
- Role of the Court of Justice of the European Communities (CJ) in 1969 (Stauder v. Ulm (Case 29/69), 1969 ECR 419, ECJ) and in subsequent case law - **fundamental rights should be included in the general principles of EU law that the Court is to protect**. EU respects the shared constitutional traditions of the Member States and the international instruments on human rights which the Member States had signed.
- In addition to the case law of the CJ, the EU legal texts related directly or indirectly to Fundamental Rights (e.g. in areas such as data protection, Union citizenship, non-discrimination, fight against racism, asylum).



FUNDAMENTAL RIGHTS after the Lisbon Treaty

The EU is founded on respect of fundamental rights

Article 2 of the Treaty on European Union (TEU):

- *"The Union is **founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect of human rights, including the rights of persons belonging to minorities.** These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."*

Article 49 of TEU

- *Any European State which **respects the values referred to in Article 2** and is **committed to promoting them** may apply to **become a member of the Union (...)***



Article 6 TEU

1.

*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 provisions of the Charter **shall not extend in any way the competences of the Union as defined in the Treaties**.*

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2.

*The Union shall **accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms**. Such accession shall not affect the Union's competences as defined in the Treaties.*

3.

***Fundamental rights**, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, **shall constitute general principles of the Union's law**.*

Accession of the EU to the ECHR

- Accession of the EU to the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR) has become possible with the entry into force of the Lisbon Treaty (legal basis Article 6 (2) TEU).
- This provision imposes also an obligation on the EU institutions and on MS to undertake all necessary steps in order to achieve that objective.
- The accession of the EU to the Convention is of high political and legal significance.

Article 7 of TEU

- **Article 7** of the Treaty on the European Union is a **last resort mechanism** which provides the Union with remedial and preventive mechanisms aimed to cover structural and systematic situations which either constitute **serious and persistent breach of fundamental rights or create a clear risk of a serious breach of the latter**.



The Charter of Fundamental Rights of the European Union

- The Charter of Fundamental Rights of the European Union solemnly proclaimed by the Presidents of the European Parliament, the Council and the Commission at the Nice European Council on 7 December 2000. At that time, it did not have binding legal effect.
- **Entry into force of the Lisbon Treaty:**
 - Article 6(1) of the Treaty on European Union, as modified by the Lisbon Treaty, provides that the **Charter is legally binding** and has the same legal value as the Treaties;
 - **Charter applies to EU institutions and bodies and to the Ms when they are implementing EU law. Charter's provisions shall not extend the EU's competences** as defined in the Treaties. (Article 51 of the Charter)
 - The Charter entrenches all the rights found in the European Convention on Human Rights as well as other rights and principles resulting from the common constitutional traditions of the EU Member States, the case law of the European Court of Justice and other international instruments.



The Charter and the European Convention on Human Rights

- Article 53 of the Charter: *"Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions"*.
- **The level of protection afforded by the Charter may not, in any instance, be lower than that guaranteed by the ECHR**, with the result that the arrangements for limitations may not fall below the level provided for in the ECHR.



The Charter of Fundamental Rights of the EU - its practical implications

- The European Commission adopted on 19 October 2010 a **Strategy for effective implementation of the Charter of Fundamental Rights by the EU**
- The key objectives:
 - to render as effective as possible the rights enshrined in the Charter.
 - The **EU must lead by example**, in particular when it legislates
 - The Commission will publish an Annual Report on the Charter's application to monitor the progress achieved.

The rights and principles recognized in the EU Charter of Fundamental Rights will constitute a general reference point for screening in the area of fundamental rights

Fundamental Rights under the Charter

- The presentation **is limited to Fundamental Rights which are not treated under other Chapters**
 - Social
 - Science and research
 - Consumer and health protection,
 - Justice
 - Education



Human dignity (Article 1 of the Charter)

- Fundamental importance of this provision.
- Is not contained in the ECHR but recognised by case-law (*e.g. decision of European Court of Human Rights of 22 November 1995, C.R. v United Kingdom*).
- Human dignity is implicitly or explicitly recognised as the fundamental right “par excellence” in all Member States’ constitutional orders.
- The European Court of Justice has mentioned human dignity several times.
- Human dignity is a horizontal principle that characterises the entire Charter.



Right to life (Article 2 of the Charter)

- This is a right protected by the ECHR (Article 2(1) and Article 1 of Protocol 6 - Abolition of the death penalty).
- The European Court of Human Rights has defined the limits of this right in its case-law.

Integrity of person (Article 3 of the Charter)

- Integrity of the person and certain bioethical standards (human integrity recognized as a general principle of community law in *C-377/98 Netherlands vs. European Parliament and the Council*);
- Inspired by the Council of Europe Convention on human rights and biomedicine.

Prohibition of torture (Article 4 of the Charter)

- This provision – corresponding to Article 3 of the ECHR - prohibits in **absolute terms** torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour .
- No derogation is possible of this prohibition (Article 52(3) of the Charter) Article 4 of the Charter thus has to be interpreted in accordance with the ECHR, which does not allow for derogations to the prohibition against torture.
- EU legislation on trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment will be **screened in the chapter related to trade and external relations.**

Prohibition of slavery and forced labour (Article 5 of the Charter)

- Corresponds to article 4(1) and (2) of the ECHR and has the same meaning and scope
- Paragraph 3 stems directly from the human dignity and takes into account of recent developments (organised crime, illegal immigration, sexual exploitation networks). Chapter VI of the *Convention implementing Schengen Agreement* integrated into Union *acquis*, requires that MS impose appropriate penalties on any person who, for financial gain, assist or tries to assist an alien to enter or reside within the territory of another MS in breach of that MS laws on entry and residence

Right to liberty and security (Article 6 of the Charter)

- Rights guarantee in Article 6 corresponds to Article 5 of the ECHR and have the same meaning and scope

Respect for private and family life (Article 7 of the Charter)

- Corresponds to Article 8 of ECHR (having in mind the development of technology word 'correspondence' has been replaced by work 'communications')

Protection of personal data (Article 8 of the Charter)

- Article 16 of the Treaty on the Functioning of the EU, Article 8 of the ECHR and Council of Europe convention for the protection of individuals with regard to automatic Processing of Personal Data (ratified by all MS), Directive 95/46/EC, Regulation (EC) no 45/2001

Right to marry and right to found a family (Article 9 of the Charter)

- Article 9 provides that the right to marry ‘*shall be guaranteed in accordance with the national laws*’ governing its exercise. This provision is modelled on the corresponding Article 12 of the ECHR, but the reference to men and women has been sidelined. In other words, Article 9 of the Charter is formulated in a gender neutral manner. Domestic laws have consequently a crucial role under Article 9.
- Article 9 of the Charter does not refer to a supposed ‘right to divorce’, which is thus still governed by domestic laws.

Freedom of thought, conscience and religion (Article 10 of the Charter)

- In protecting the right to freedom of thought, conscience and religion, Article 10 (1) corresponds to Article 9 (1) ECHR.
- This freedom is "one of the foundations of a 'democratic society'" (*judgment in Kokkinakis v Greece of 25 May 1993*). It encompassed the right to express one's convictions.
- The right to conscientious objection recognised in Article 10 (2) of the EU Charter, has no equivalent in the ECHR but it is increasingly accepted in international human rights law. Article 10 (2) reflects national constitutional traditions and developments in domestic law.

Freedom of expression and information (Article 11 of the Charter)

- Scope under Union law equivalent to the protection provided by Article 10 of the ECHR - freedom of expression, as *embodied in Article 10 of the ECHR*, is recognised as a general principle of law the observance of which is ensured by the Court of Justice of the EU.

Freedom of Assembly and Association (Article 12 of the Charter)

- Article 12 (1) – corresponding to Article 11 of the ECHR - of the EU Charter protects the right to freedom of peaceful assembly and to freedom of association at all levels.
- Article 12 (2) of the EU Charter asserts that political parties at Union level contribute to expressing the will of the citizens of the Union.

Right to property (Article 17 of the Charter)

- The right to property – corresponding to Article 1 of the additional Protocol to the ECHR - has been recognized as a fundamental constitutional right in all Member States of the EU. As such, this right has been several times confirmed in the case-law of the Court of Justice of the European Union.

Respect for cultural, religious and linguistic diversity (Article 22 of the Charter)

- Based on Article 3(3) and 6 of the TEU and Article 167(1) and (4) o TFEU

Principle of non-discrimination (Article 21 of the Charter)

- Article 19 of the TFEU, Article 14 of the ECHR and Article 11 of the Biomedicine Convention (see Chapter 19)

Combatting Racism and xenophobia (I)

- Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law of 28 November 2008:
 - to ensure that racist and xenophobic offences are sanctioned in all Member States by effective, proportionate and dissuasive criminal penalties;
 - The offences include the public incitement to violence or hatred against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin, which shall also be punishable if committed by public dissemination or distribution of tracts, pictures or other material.
 - The Commission is committed to monitoring the effective implementation of this Framework Decision as closely as possible. A group of Member States' experts has been created to this end.

Combatting racism and xenophobia (II)

Also in other EU instruments (examined in detail in other Chapters):

- The "Race Equality Directive" lays down a framework for combating discrimination on the grounds of racial or ethnic origin, and the "Employment Equality Directive" lays down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation;
- The Audiovisual Media Services Directive bans hate speech by prohibiting any incitement to hatred based on grounds of race, sex, religion or nationality.

Right of the Child (Article 24 of the Charter)

- This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.
- Article 3, paragraphe 3 of the TEU: (the Union) « *shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.* »