



THE FUNDAMENTAL AND HUMAN RIGHTS PROTECTION MECHANISM IN THE EUROPEAN UNION

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1. THE CHARTER OF FUNDAMENTAL RIGHTS

1.1. WHY?

1.2. WHAT EXACTLY?



1.1. WHY? QUESTIONS FOR BRAINSTORMING



- HAVE YOU USED THE CHARTER IN YOUR WORK?
- CAN YOU RECALL OF A NATIONAL COURT JUDGMENT WHICH HAS APPLIED/INTEPRETED THE CHARTER?
- CAN YOU NAME A JUDGMENT OF THE COURT OF JUSTICE OF THE EUROPEAN UNION WHICH HAS QUOTED THE CHARTER?

1.1. WHY?

- THE INSTITUTIONS OF THE EUROPEAN UNION, AND IN PARTICULAR NATIONAL PUBLIC AUTHORITIES, HAVE A MAJOR IMPACT ON HUMAN RIGHTS WHEN APPLYING EUROPEAN UNION LAW. THESE RIGHTS OF NATURAL AND LEGAL PERSONS MUST NOT BE INFRINGED: ARBITRARILY, WITHOUT LEGAL BASIS AND DISPROPORTIONATELY.
- SINCE EUROPEAN UNION LAW IS HAVING AN INCREASING IMPACT ON THE LEGAL SYSTEMS OF THE MEMBER STATES, THERE IS CLOSE CONTACT WITH EUROPEAN UNION LAW IN ALMOST EVERY AREA: IT CAN NO LONGER BE SAID THAT, AS A LAWYER, IF I AM NOT DIRECTLY INVOLVED IN ADMINISTRATIVE LAW, I HAVE NO PARTICULAR CONTACT WITH EUROPEAN UNION LAW; WE ALL HAVE THAT CONTACT NOWADAYS IN SOME WAY OR OTHER, AND HUMAN RIGHTS ARE INEVITABLY EVERYWHERE!
- WHAT IS MORE, SOMETIMES THE CHARTER CAN ALSO HAVE AN IMPACT ON RELATIONS BETWEEN PRIVATE INDIVIDUALS BY HAVING A 'TRIANGULAR EFFECT' (vt nt Maximilian Bell, Third-party-effects of the Charter of Fundamental Rights of the European Union and its consequences for national labor law, *Das Recht der Arbeit*, 2019: https://360.lexisnexis.at/d/artikel/drittwirkung_der_charta_der_grundrechte_der...



1.2. WHAT EXACTLY?

- **HUMAN RIGHTS: UNIVERSAL AND FUNDAMENTAL:**
 - I CIVIL AND POLITICAL RIGHTS;
 - II SOCIAL, ECONOMIC AND CULTURAL RIGHTS;
 - III COLLECTIVE RIGHTS;
 - IV RIGHTS RELATED TO TECHNOLOGICAL DEVELOPMENT).
- **FUNDAMENTAL RIGHTS: PARTICULARISED, I.E. PROTECTED ON THE BASIS OF A SPECIFIC LEGAL AND POLITICAL ORDER (USUALLY A CONSTITUTION) IN A SPECIFIC TERRITORY (E.G. CHAPTER II OF THE CONSTITUTION OF THE REPUBLIC OF ESTONIA): HUMAN RIGHTS ARE TRANSFORMED INTO FUNDAMENTAL RIGHTS IN THE CONSTITUTION AND ARE NO LONGER MERELY THE SLOGANS OF ACTIVISTS OR THE DREAMS OF PHILOSOPHERS!**
- **HUMAN RIGHTS ARE NOT A LUXURY, THEY ARE NEITHER LEFT-WING NOR RIGHT-WING (SEE KLIMASENIORINNEN SCHWEIZ)**
- **HUMAN RIGHTS FOR ALL.**
- **HUMAN RIGHTS MUST NOT BE DEVALUED.**
- **UN DECLARATION OF HUMAN RIGHTS (1948).**
- **EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR) (1950/1953).**
- **CHARTER OF FUNDMANETAL RIGHTS OF THE EU (2000/ LEGAL FORCE AS OF: 1.12.2009).**



EU Charter of
Fundamental Rights

1.2. WHAT? SHORT OVERVIEW OF THE HISTORY OF FUNDAMENTAL RIGHTS PROTECTION IN THE EU:

- THE NATURE OF THE EUROPEAN UNION (SUI GENERIS): IS THE CREATION OF A EUROPEAN UNION BASED ON RESPECT FOR HUMAN RIGHTS A MYTH OR THE RESULT OF PRACTICAL NECESSITY?
- THE MEMBER STATES DID NOT CONSIDER IT NECESSARY TO INCLUDE FUNDAMENTAL RIGHTS IN THE TREATIES OF ROME, BUT THE PEOPLE BEGAN TO CHALLENGE THE ACTIONS OF THE EUROPEAN COMMUNITIES
- CASE LAW OF THE EUROPEAN (UNION) COURT: FROM 1969/1970 (STAUDER, INTERNATIONALE HANDELSGESELLSCHAFT, NOLD) -
- FUNDAMENTAL RIGHTS ARE UNWRITTEN, BUT GENERAL PRINCIPLES OF LAW
- THE EUROPEAN CONVENTION ON HUMAN RIGHTS WAS INVOKED: EQUAL TREATMENT, INALIENABILITY OF PROPERTY, FREEDOM OF EXPRESSION, FREEDOM OF ASSOCIATION.
- THE BASIC TREATIES WERE GRADUALLY SUPPLEMENTED ALONG THESE LINES.
- CHARTER DRAFTED IN 1999 - EUROPEAN AND NATIONAL PARLIAMENTS INVOLVED, LED BY ROMAN HERZOG; ADOPTED AS A SOLEMN DECLARATION IN NICE IN 2000.
- IT ONLY ACQUIRED LEGAL FORCE WITH THE ENTRY INTO FORCE OF THE LISBON TREATY ON 1 DECEMBER 2009 (ART. 6(1) OF THE TREATY OF THE EUROPEAN UNION). THE TREATY COMMITS THE EU TO ACCEDE TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ART. 6(2) OF THE TREATY). FUNDAMENTAL RIGHTS WITHOUT A CONSTITUTION? IS THE EUROPEAN COURT A CONSTITUTIONAL COURT?



1.2. WHAT? THE EU INSTITUTIONS AND THE CHARTER:

- EUROPEAN PARLIAMEN LIBE COMMITTEE AND PETITIONS COMMITTE, INCREASING ROLE OF THE EP AS LEGISLATOR.
- EUROPEAN OMBUDSMAN. RIGHT TO A GOOD ADMINISTRATION.
- COUNCIL OF THE EUROPEAN UNION - COORDINATES THE FUNDAMENTAL RIGHTS POLICY OF MEMBER STATES .
- EUROPEAN COMMISSION: MUST ENSURE THE APPLICATION OF EU LAW INCLUDING THE CHARTER. CAN INITIATE INFRINGEMENT PROCEEDINGS BEFORE THE COURT OF JUSTICE OF THE EU. APPOINTS COORDINAATORS: CHILDRENS RIGHTS, RIGHTS OF RELIGIOUS GROUPS, VICTIMS' RIGHTS, FIGHT AGAINST HUMAN TRAFFICKING. RULE OF LAW REPORTS.
- FRA - EU AGENCY FOR FUNDAMENTAL RIGHTS.
- COURT OF JUSTICE OF THE EU.
- EUROPEAN DATA PROTECTION SUPREVISOR.
- CONTROLLER OF PROCEDURAL GUARANTEES (OLAF).
- EU BODY FOR ETHICAL STANDARDS.



1.2. WHAT? THE EU INSTITUTIONS AND THE CHARTER:

- DOES THE EUROPEAN UNION HAVE A COHERENT FUNDAMENTAL RIGHTS POLICY?
- LEGISLATOR, SOFT LAW, INFORMATION AND COORDINATION, FINANCIAL AND PRACTICAL SUPPORT, DATA AND VISIBILITY.
- HUGE DUPLICATION; GENERALIST VS SPECIALIST?
- DEPENDENCE ON MEMBER STATES: NON-DISCRIMINATION, MIGRATION. PARADOX: NEVER BEFORE HAS THE EU INVESTED SO MUCH IN HUMAN RIGHTS, AND NEVER BEFORE HAVE THEY BEEN SO THREATENED?
- WHO THINKS OF A HUMAN BEING?



CONTENTS OF THE CHARTER

DIGNITY

FREEDOMS

EQUALITY

SOLIDARITY

CITIZEN'S RIGHTS

JUSTICE

GENERAL
PROVISIONS
APPLICATION AND
INTERPRETATION
OF THE CHARTER

NEW ISSUES

- TECHNOLOGY, DEVELOPMENT IN THE SOCIETY.
- EUGENIC PRACTICES.
- REPRODUCTIVE CLONING.
- CLARITY OF LAW
- LAWS VS GENERAL PRINCIPLES.
- EUROPEAN CONVENTION ON HUMAN RIGHTS
- RESTRICTIONS WITH GENERAL CLAUSE.
- THE CHARTER DOES NOT CREATE NEW COMPETENCES TO THE EU.
- RELATIONSHIP BETWEEN EU AND MEMBER STATES IS COMPLICATED - APPLICATION, INTERPRETATION - DIFFICULT.
- SEE ALSO EXPLANATIONS TO THE CHARTER: 2007/OJ C303/2 : <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0017:0035:EN:PDF>



HORIZONTAL PROVISIONS

- ART 51 – SCOPE
- ART 52 – SCOPE OF GUARANTEED RIGHTS AND INTERPRETATION
- ART 53 – LEVEL OF PROTECTION
- ART 54 – PROHIBITION OF ABUSE OF RIGHTS
- **NB! APPLICATION OF THE CHARTER**
 - ALWAYS TO EU INSTITUTIONS.
 - TO MEMBER STATES ONLY IF THEY ARE APPLYING EU LAW.
- **NB! THE LIMITATION OF THE RIGHTS IS POSSIBLE ONLY**
 - PROVIDED BY AW.
 - RESPECT THE ESSENCE OF THE RIGHT.
 - PROPORTIONATE: NECESSARY IN GENERAL INTEREST OR IN ORDER TO PROTECT THE RIGHTS AND FREEDOMS OF OTHERS.

HARTA'S RELATION TO OTHER NORMS AND DOCUMENTS

- **GENERAL PRINCIPLES OF LAW** (ART 6 PARA 3) – THEY ARE PARALLEL APPLICABLE, BUT THEIR REAL LIFE AFTER THE CHARTER GAINED FORCE IS MINIMAL.
- **EUROPEAN CONVENTION ON HUMAN RIGHTS:** CHARTER ART 52 PARA 3 - SAME PROTECTION, BUT DOES NOT PREVENT UNION LAW PROVIDING MORE EXTENSIVE PROTECTION. EG IN WORKERS RIGHTS AND SOCIAL RIGHTS - NB! NOT ALL IN CHARTER ARE RIGHTS ARE ALSO „ONLY“ PRINCIPLES!
 - **NB! CHARTER IS BASED MAINLY ON THE EUROPEAN CONVENTION ON HUMAN RIGHTS INCLUDING ALSO NEW AND MORE RECENT RIGHTS, SOCIAL, ECONOMIC AS WELL AS EU CITIZENS' RIGHTS.**
 - **NB! THE ECHR ONLY GIVES A MINIMUM PROTECTION, BUT ABSOLUTE RIGHTS WHICH CANNOT BE RESTRICTED ACCORDING TO THE CONVENTION (E.G. ECHR ART 3 PROHIBITION OF TORTURE AND DEGRADING TREATMENT) CAN ALSO NOT BE RESTRICTED.**
- **CONSTITUTIONS OF THE MEMBER STATES:** NATIONAL INSTITUTIONS APPLY AND VIOLATE NATIONAL LAW - NOT IN COMPETENCE OF THE CHARTER, NATIONAL INSTITUTIONS APPLY EU LAW - CHARTER APPLIES - EU INSTITUTIONS APPLY EU LAW - CHARTER APPLIES AND NO NATIONAL LAW APPLIES.

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, THE COMMUNITY 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. YET, SEE C-299/11 *MELLONI* - CJEU - MS ARE APPLYING EU LAW EVEN IF THE NATIONAL STANDARD IS HIGHER, THE EU STANDARD HAS PRIMACY.



PRINCIPLES VS RIGHTS

- Article 51 (1) CFR 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.
- Article 52 (5) CFR The provisions of this Charter which **contain principles** may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be **judicially cognisable only in the interpretation of such acts and in the ruling on their legality:**
 - there is therefore less intensive judicial review where principles are concerned compared with rights
 - rights violations can ultimately lead to the annulment of EU acts (incl legislation) and the disapplication of national law

CHARTER AND THE EUROPEAN COURT OF JUSTICE

- DIRECT ACTIONS BEFORE THE GENERAL COURT: CJEU: ART 263 PARA 4 - IT IS ABOUT NORM ADPTED BY THE EU INSTITUTION IT IS POSSIBLE TO QUOTE THE CHARTER AS DIRECTLY APPLICABLE .
- PRELIMINARY REFERENCES VIA NATIONAL COURTS TO THE EU COURT: INTERPRETATION OF THE CHARTER, VALIDITY OF SECONBDARY LAW.



CHARTER AS PRIMARY LAW. ARTICLE 47 OF THE CHARTER

- **DIRECT EFFECT:** THE CHARTER IS APPLICABLE IN NATIONAL COURTS, WHEREVER THE MS ARE 'IMPLEMENTING EU LAW' EXCEPT CHARTER PRINCIPLES.
- **PRIMACY:**
 - **DUTY OF CONSISTENT INTERPRETATION (OR INDIRECT EFFECT):** EU LAW MUST BE EFFICIENT
 - **DUTY OF DISAPPLICATION OF DOMESTIC LAW IF INTERPRETATION IMPOSSIBLE INCLUDES ALSO CONSTITUTION**
 - **NB! DISAPPLICATION MEANS NOT INVALIDITY - NATIONAL LAW CAN STILL BE APPLIED IN NATIONAL CIRCUMSTANCES.**
- **STATE LIABILITY (DAMAGES FOR VIOLATION OF EU LAW) BASED ON THE CHARTER : RIGHTS OF INDIVIDUALS, SERIOUS BREACH, CAUSAL LINK B/W BREACH AND DAMAGE**
- **THE CHARTER CAN ALSO CREATE NEW REMEDIES: ARTICLE 47 CFR - THE RIGHT AN EFFECTIVE REMEDY AND TO A FAIR TRIAL - WHENEVER A NATIONAL COURT APPLIES EU LAW, IT MUST COMPLY WITH THE PROCEDURAL RIGHT TO AN EFFECTIVE REMEDY: MS MAY CHOOSE THE APPROPRIATE REMEDIES [PROCEDURAL AUTONOMY], BUT THESE MUST RESULT IN 'REAL AND EFFECTIVE JUDICIAL PROTECTION OF THE RIGHTS THAT ARE DERIVED FROM EU LAW.**

2. THE CHARTER AND NATIONAL LAW (BASED ON ESTONIAN EXAMPLE)

2.1. CHARTER AND ESTONIAN LAW IN GENERAL

2.2. EXAMPLES OF CONCRETE CASES

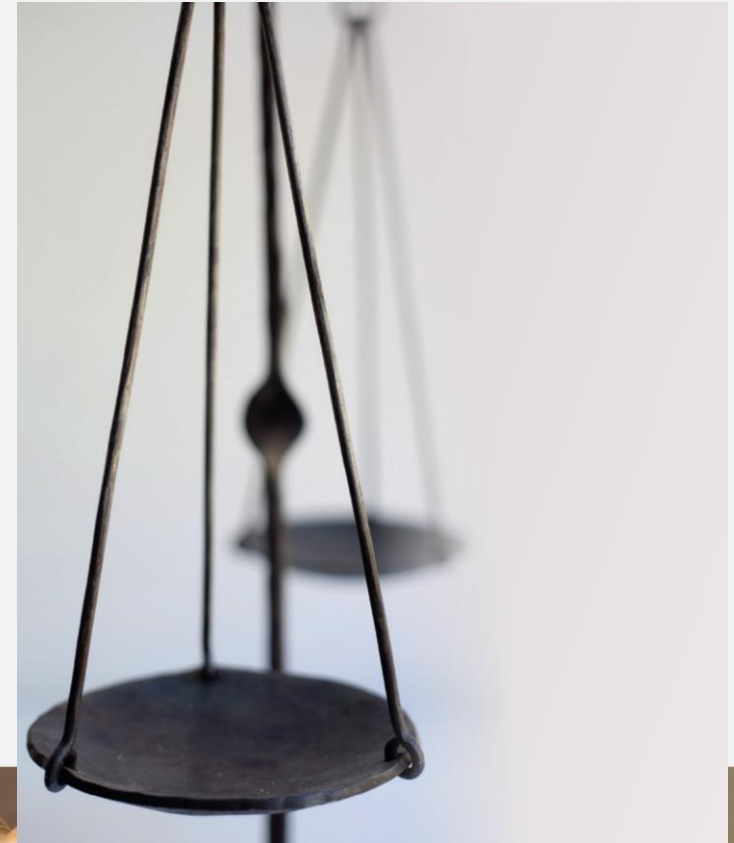


2.1. CHARTER AND THE ESTONIAN LAW IN A NUTSHELL: BERMUDA'S TRIANGLE ? CONSTITUTION, THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND NATIONAL CONSTITUTION. EACH ONE HAS ITS ROLE TO PLAY.



CONSTITUTIONALITY CHARTER, CONVENTION, NATIONAL CONSTITUTION.

- ◆ Supreme Court: interprets the Estonian Constitution:
 - ◆ in the light of the ECHR, as applied by the European Court of Human Rights (ECtHR).
 - ◆ In the light of **the Charter**.
- ◆ **If the law violates the Charter, it will most likely violate also the Constitution.**
- ◆ Do Constitution and the Charter attribute to the violated fundamental right a same scope?



CHARTER AND ESTONIAN LAW IN GENERAL



- ◆ Estonian Constitution (1992) is inspired by the ECHR (Roman Herzog)
- ◆ The Supreme Court of Estonia has referred to the Charter:
 - ◆ Already prior to Estonia's accession to the EU
 - ◆ And before the Charter gained legally binding force

Charter and the Parliament of Estonia (*Riigikogu*).

- ◆ Isolated episodes: Members of parliament in a debate (e.g. COVID-19 and data protection). Could be more: awareness rising among legislator/politicians needed! Charter: mixture of rights and principles.
- ◆ Using Charter in legislative drafting: e.g., ratification of international instruments about automatic processing of personal data or in adopting the Child Protection Act. Early involvement important!



Charter and the executive and the Chancellor of Justice

- ♦ Executive could be more courageous in applying the Charter, e.g., in issues of international protection. Executive is mainly applying Charter in preparing legal acts and opinions, not in applying the law.
- ♦ The Chancellor of Justice (Ombudsman) is often making use of the Charter, e.g., in cases of discrimination and disability rights.
- ♦ The Commissioner for Gender Equality and Equal Treatment has referred to Articles 21 (non-discrimination) and 23 (equality between women and men) of the Charter, together with other legal sources, in two opinions in 2012 and 2016.



Charter and judiciary: examples of the case-law of the Supreme Court of Estonia (*Riigikohus*)

- ◆ From the three state-power – judiciary has applied the most the Charter.
- ◆ It has given hints to legislator and executive (liberty and security).
- ◆ The Supreme Court: „administration and courts must by assessing the sexual orientation of an asylum seeker respect the fundamental rights guaranteed by the Charter.“
- ◆ The Supreme Court uses the Charter as a tool of interpretation: most of the cases are related to administrative law and constitutional law, but also in criminal and civil law.



INIMÕIGUSTE KESKUS – ESTONIAN HUMAN RIGHTS CENTRE

- BETWEEN 01.09.2018 AND 31.08.2023, THE SUPREME COURT HAS REFERRED TO THE CHARTER 14 TIMES AND THE DISTRICT COURTS 12 TIMES. ARTICLE 47 - THE RIGHT TO AN EFFECTIVE REMEDY AND TO A FAIR TRIAL - HAS BEEN INVOKED BY THE COURTS THE MOST. IN MOST CASES, THE COURTS FOUND THAT ARTICLE 47 HAD NOT BEEN VIOLATED OR USED THE ARTICLE TO CLARIFY RIGHTS. IN CASE NO 5-20-10, THE SUPREME COURT CITED ARTICLE 47 OF THE CHARTER TO DECLARE THREE PROVISIONS OF THE ALIENS ACT UNCONSTITUTIONAL.
- THE COURTS HAVE REFERRED TO THE CHARTER IN FIVE CASES CONCERNING THE RIGHTS OF ASYLUM SEEKERS. IN TWO JUDGMENTS, THE SUPREME COURT HAS REFERRED TO ARTICLE 19 (PROTECTION IN THE EVENT OF RETURN, EXPULSION OR EXTRADITION) AND ARTICLE 18 (RIGHT OF ASYLUM), AND IN ONE JUDGMENT TO ARTICLE 6 (RIGHT TO LIBERTY AND SECURITY) WHEN CONSIDERING THE JUSTIFICATION FOR DETAINING AN ASYLUM SEEKER. THE DISTRICT COURTS HAVE ALSO REFERRED TO ARTICLE 4 (PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT).
- THE DISTRICT COURTS HAVE MADE MOST USE OF ARTICLE 8 (PROTECTION OF PERSONAL DATA) AND ARTICLE 41 (RIGHT TO GOOD ADMINISTRATION), REFERRING TO BOTH IN TWO



CHARTER AND THE SUPREME COURT:

- ◆ THE REFERENCE TO THE CHARTER IS AN ADDITIONAL TO THE ESTONIAN CONSTITUTION TO RAISE A FUNDAMENTAL RIGHT;
- ◆ WITH THE HELP OF THE CHARTER, IT IS POSSIBLE TO INTERPRET MODERN FUNDAMENTAL RIGHTS (REASONABLE PROCEDURAL TIME, GOOD ADMINISTRATION, DATA PROTECTION) NOT HITHERTO DEALT WITH IN THE CASE-LAW OF THE SUPREME COURT, AS WELL AS MISSING RIGHTS (E.G. THE SUBJECTIVE RIGHT TO A CLEAN NATURAL ENVIRONMENT).
- ◆ THE DECISION MUST ASSESS THE COMPATIBILITY OF ESTONIAN OR EU LEGISLATION WITH EU LAW, INCLUDING THE CHARTER. THE REFERENCE TO THE CHARTER IS INTRODUCED IN THE JUDGMENT BY QUOTING THE TEXT OF THE ECJ JUDGMENT. THE SUPREME COURT DOES NOT FURTHER DEVELOP THE LINK WITH THE CHARTER. THE SUPREME COURT HAS SOMETIMES ARGUED THAT THE CHARTER PROVISION IS APPLICABLE ALSO OUTSIDE THE SCOPE OF EU LAW, ARTICLE 41 OF THE CHARTER (RIGHT TO GOOD ADMINISTRATION) AND ARTICLE 47 (ESSENTIALLY THE RIGHT TO A FAIR TRIAL).

CHARTA AND THE PRELIMINARY REFERENCES OF ESTONIAN COURTS

- OUT OF ALL 47 PRELIMINARY REFERENCES THERE ARE 11 DIRECT REFERENCES TO THE CHARTER ARTICLES 3 PARA 1, 6, 16, 17 (MANY TIMES) 20, 21 PÄRA 1, 31 PÄRA 1, 39 PÄRA 2 , 47 AND 52 PÄRA 1.
- REFERRING TO CJEU: TARTU DISTRICT COURT, TALLINN ADMINISTRATIVE COURT, SUPREME COURT.
- ACCESS TO DATA BY PUBLIC AUTHORITIES IN CRIMINAL PROCEEDINGS: INTERPRETATION OF THE RELEVANT DIRECTIVE IN CONJUNCTION WITH ARTICLES 7, 8, 11 AND 52(1) OF THE CHARTER - A CASE OF THE SO-CALLED "PROSECUTOR'S OFFICE" WHICH RECEIVED A RESPONSE FROM THE EUROPEAN COURT OF JUSTICE AND IN WHICH THE CHARTER WAS ALSO INVOKED (EUROPEAN COURT OF JUSTICE C-746/18, 2.03.2021).
- ONE OF THE CASES ALSO ASKED WHETHER THE OBLIGATION UNDER EU LAW COMES DIRECTLY FROM THE CHARTER IF THE EU REGULATION DOES NOT APPLY IN THE CASE. CJEU, LUX EXPRESS, C-614/20, 8.09.2022: CJEU DID NOT ANSWER THIS QUESTION BECAUSE IT CONSIDERED THAT THE REGULATION WAS APPLICABLE).

USE OF CHARTER AS CONSTITUTIONAL COURT



➤ **TWICE WHEN
SUPREME COURT
HAS REFERRED A
CASE TO THE
CJEU!**

CHARTER AND THE SUPREME COURT



- Supreme Court declared unconstitutional and invalid provisions of the Aliens Act, which did not allow to challenge in court the early termination of the stay of Ukrainian seasonal workers who had arrived in the country without a visa (2021): Article 47.
- Review of the constitutionality Government Regulation concerning health requirements for a prison officer (2022): Relationship between Constitution and EU law (discrimination).
- State responsibility in a case where the Supreme Court failed to ask for a preliminary reference (2022): Article 47 (state aid case).
- BIRDS AND TREES

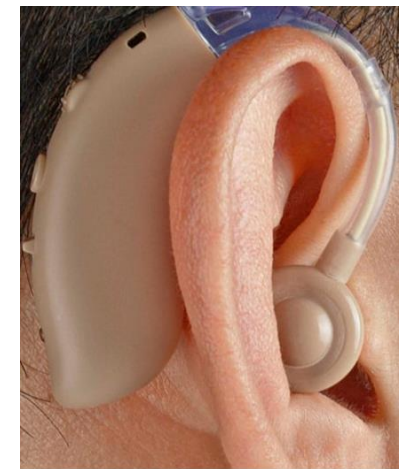
2.2. CHARTER AND THE SUPREME COURT THREE EXAMPLES



- EQUAL TREATMENT OF PRISON OFFICER
- COVID-19 CASES
- GREEN PARTY AND DEPOSIT IN ELECTIONS

Case study: Case 5-19-29=C-795/19, XX v. *Tartu Vangla*. Facts

- For almost fifteen years from December 2002, the applicant in the main proceedings was employed as a prison officer by Tartu Prison (Estonia). His employment obligations included, inter alia, supervising persons under electronic surveillance by means of a surveillance system, passing on information on those persons, monitoring surveillance and signaling equipment, responding to and passing on information, particularly in the event of alarms, and identifying breaches of the internal regulations.
- He was never criticized for the performance of his professional duties.
- A medical certificate dated 4.04.2017 showed that the applicant's hearing was impaired in one ear, with the result that he failed to reach the level prescribed by Estonian Government Regulation No 12 concerning the health requirements and medical examination for prison officers.



Case study: Case 5-19-29, *XX v. Tartu Vangla. Facts (continued)*



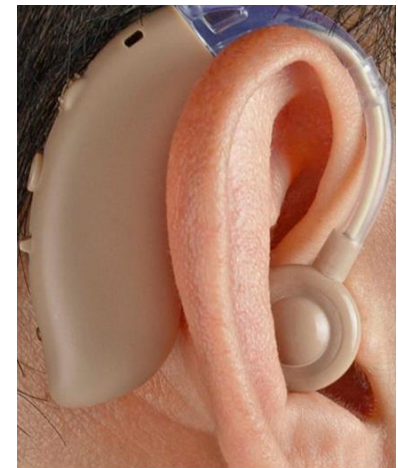
- By decision of 28.06.2017, the applicant was dismissed by the Governor of Tartu Prison. Applicant found the Regulation No 12 unconstitutional, contrary to the law on equal treatment, his dismissal unlawful and was seeking for compensation.
- On 14.12.2017 Tartu Administrative court dismissed the action by the applicant against his dismissal.



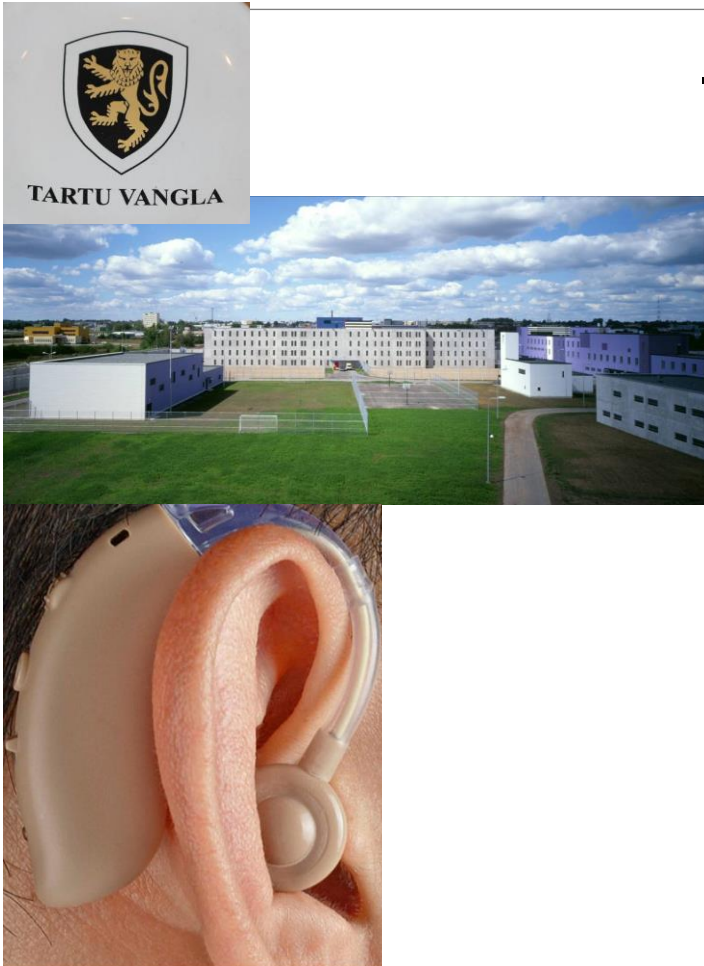
UP
GRADE
YOUR LEGAL
EXPERTISE

Case study: Case 5-19-29, *XX v. Tartu Vangla. Facts (continued)*

- However, on 11.04.2019, Tartu Court of Appeal upheld the appeal brought by the applicant, set aside the earlier judgment, declared that the decision to dismiss him was unlawful and ordered Tartu Prison to pay him compensation corresponding to 60 months' salary.
- According to that court it was contrary to the general principle of equality and to the principle of protection of legitimate expectations enshrined in the Constitution.
- Therefore, the Tartu Court of Appeal did not apply Regulation No 12 (the annex of the regulation being unconstitutional) to the case and initiated the procedure for reviewing the constitutionality before the Constitutional Review Chamber of Estonian Supreme Court.
- So, there were differences of opinions between national courts of first and second instance!



Case study: Case 5-19-29, *XX v. Tartu Vangla. Facts (continued)*



- According to Ministry of Justice and Tartu Prison, prison officers are not actually prohibited from wearing a hearing aid when carrying out their duties, but their hearing must be tested without the use of such a device, that is to say without correction. A prison officer's natural level of auditory acuity should therefore be sufficient, without the aid of a medical device, to ensure his safety and that of his colleagues, and full communication in all circumstances.



Case study: Case 5-19-29, *XX v. Tartu Vangla*.

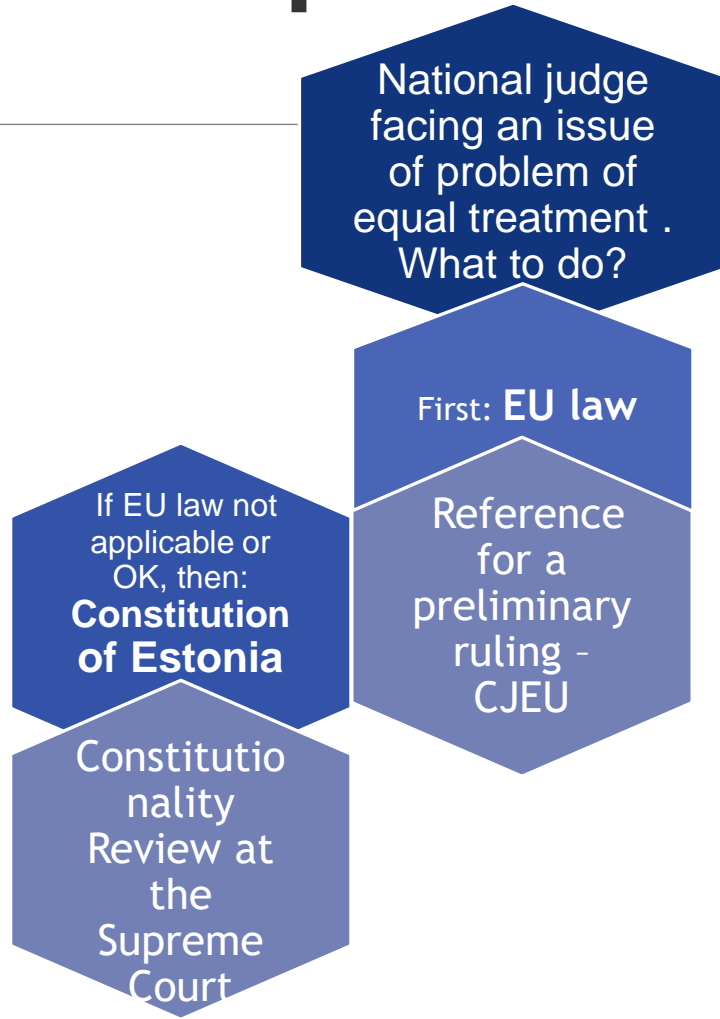
Positions of Estonian authorities

Minister of Justice:
Regulation No 12 is justified and proportional by the need to guarantee security and public order.

Minister of Health and Labor:
Regulation No 12 is not proportional

Chancellor of Justice:
Regulation No 12 is not proportional

Important! Order of examination:



- Opinion of the Estonian Supreme Court

According to the national rules of procedure, in the context of a **review of constitutionality**, it does not have the power to examine directly whether the national legislation is compatible with EU law. By contrast, the Tartu Court of Appeal, which had jurisdiction in that regard, should probably have carried out such an examination. Nevertheless, the Supreme Court may itself refer a question to the CJEU for a preliminary ruling on that matter.

If, as a result, EU law precludes legislation such as that at issue, national legislation should be disapplied without the Supreme Court having to examine the application for a review of constitutionality, which would be declared inadmissible.

Conversely, if it results that EU law does not preclude such legislation, the Supreme Court may review the constitutionality of the legislation at issue.





RIIGIKOHUS
SUPREME COURT OF ESTONIA

**Question referred by
the Supreme Court of Estonia on
24.10.2019, based on Article 267 (1)
b and (3) TFEU**



Should Article 2(2), read in combination with Article 4(1), of ... Directive [2000/78], be interpreted as precluding provisions of national law which provide that impaired hearing below the prescribed standard constitutes an absolute impediment to work as a prison officer and that the use of corrective aids to assess compliance with the requirements is not permitted?

Reference by

the Constitutional Review Chamber of the Supreme Court of Estonia, 24.10.2019



RIIGIKOHUS
SUPREME COURT OF ESTONIA



Note:

- ✓ It is the first time that the Constitutionality Review Chamber of the Estonian Supreme Court has made a reference for a preliminary ruling, more and more constitutional courts of Member States refer.
- ✓ The Supreme Court did it *ex officio*.
- ✓ The Chancellor of Justice had raised the issue of possible contradiction with EU law.
- ✓ The Supreme Court found that it can not apply *acte clair* or *acte éclairé* situation*
- ✓ NB! The Supreme Court also looked whether there is a reference for a preliminary ruling made by another court pending on this subject matter but found none (if it would have been the case would it have only stayed the proceedings?).
- ✓ The Supreme Court asked the opinion of the parties and interveners of the proceedings of whom all except the Chancellor of Justice were in favor of referral. The Minister of Health and Labor nevertheless noted that the referral could not be in the interest of the applicant, as it would prolong the procedure that had already lasted more than two years (Indeed, the case has been pending now for more than four years out of which about the half it was in the CJEU)
- ✓ The Supreme Court did not offer its solution to the CJEU, nevertheless referred to the case-law of the CJEU.

*In brief, national courts “against whose decisions there is no judicial remedy under national law” are not bound by the duty to refer to the CJEU a preliminary question on the interpretation of EU law, if the answer to the question is wholly plain, admits of no reasonable doubt (*acte clair*) or there is already well-established case-law on the point (*acte éclairé*)

Preliminary reference procedure in the case of C-795/19, *XX v. Tartu Vangla* (Procedural issues)

- Supreme Court stayed the proceedings;
- Reference reached the CJEU on 29.10.2019;
- Opinion of AG SAUGMANDSGAARD ØE, 25.11.2020;
- Written procedure, second chamber of the CJEU 5 judges, statements of:
 - Lawyer of the applicant;
 - Estonian Legal Chancellor;
 - Government of the Republic of Greece;
 - European Commission.



Substantial issues in the case of C-795/19, *XX v. Tartu Vangla*: Legal framework

EU law



- Article 2 of the TEU (Supreme Court only)
- Article 21 para 1 CFREU (Supreme Court and AG NB! CJEU did not refer to the Charter!), Article 26 CFREU (AG)
- Recitals 16, 17, 18, 20, 21 and 23 of Directive 2000/78.
- Articles 1, 2, 3, 4 and 5 of Directive 2000/78.

Substantial issues in the case of C-795/19, *XX v. Tartu Vangla*: Legal framework

Estonian law



- **Constitution of Estonia Article 12 para 1 (Equality clause) and Article 11 second sentence (legitimate expectation) (only in Estonian proceedings Tartu Administrative Court and Tartu Court of Appeal), the Chancellor of Justice also invoked Article 29 of the Constitution (freedom to choose profession)**
- Paragraph 146 of the Vangistusseadus (Law on detention).
- Regulation No 12 of the Government of the Republic of Estonia ‘concerning the health requirements and medical examination for prison officers, as well as the requirements relating to the content and format of medical certificates’, of 22.01.2013, adopted on the basis of Paragraph 146(4) of the Law on detention, entered into force on 26.01.2013: Paragraphs 3, 4 and 5.
- Annex 1 to that regulation contains a list of health problems which prevent prison officers from performing their professional duties. The ‘medical impediments’ include ‘impaired hearing below the prescribed standard’, which is classified as an ‘absolute impediment’.



Substantial issues in the case of C-795/19, *XX v. Tartu Vangla*: Legal framework

International law



- The right not to be discriminated against on grounds of disability is a fundamental right that is also enshrined in the **United Nations Convention on the Rights of Persons with Disabilities**, to which the European Union has acceded (AG and the CJEU both referred to the Convention).
- According to the case-law of the CJEU the Directive 2000/78/EC should be interpreted, if possible, in the light of this Convention.

Article 2 of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation


‘CONCEPT OF DISCRIMINATION’

‘1. FOR THE PURPOSES OF THIS DIRECTIVE, THE “PRINCIPLE OF EQUAL TREATMENT” SHALL MEAN THAT THERE SHALL BE NO DIRECT OR INDIRECT DISCRIMINATION WHATSOEVER ON ANY OF THE GROUNDS REFERRED TO IN ARTICLE 1.

2. FOR THE PURPOSES OF PARAGRAPH 1:

(A) DIRECT DISCRIMINATION SHALL BE TAKEN TO OCCUR WHERE ONE PERSON IS TREATED LESS FAVORABLY THAN ANOTHER IS, HAS BEEN OR WOULD BE TREATED IN A COMPARABLE SITUATION, ON ANY OF THE GROUNDS REFERRED TO IN ARTICLE 1;

5. THIS DIRECTIVE SHALL BE WITHOUT PREJUDICE TO MEASURES LAID DOWN BY NATIONAL LAW WHICH, IN A DEMOCRATIC SOCIETY, ARE NECESSARY FOR PUBLIC SECURITY, FOR THE MAINTENANCE OF PUBLIC ORDER AND THE PREVENTION OF CRIMINAL OFFENCES, FOR THE PROTECTION OF HEALTH AND FOR THE PROTECTION OF THE RIGHTS AND FREEDOMS OF OTHERS.’

L 30/16  Official Journal of the European Communities 2.12.2000

COUNCIL DIRECTIVE 2000/78/EC
of 27 November 2000
establishing a general framework for equal treatment in employment and occupation

THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 13 thereof,
Having regard to the proposal from the Commission (1),
Having regard to the Opinion of the European Parliament (2),
Having regard to the Opinion of the Economic and Social Committee (3),
Having regard to the Opinion of the Committee of the Regions (4),
Whereas

(1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and respect 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, as general principles of Community law.

(2) The principle of equal treatment between women and men is well established by an important body of Community law, in particular in Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (5).

(3) In implementing the principle of equal treatment, the Community should, in accordance with Article 312 of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.

(4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognized by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.

(5) It is important to respect such fundamental rights and freedoms. This Directive does not prejudice freedom of association, including the right to establish unions with others and to join unions to defend one's interests.

(6) The Community Charter of the Fundamental Social Rights of Workers recognizes the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly and disabled people.

(7) The EC Treaty includes among its objectives the promotion of coordination between employment policies of the Member States. To this end, a new employment chapter was incorporated in the EC Treaty as a means of developing a coordinated European strategy for employment to promote a skilled, trained and adaptable workforce.

(8) The Employment Guidelines for 2000 agreed by the European Council at Helsinki on 10 and 11 December 1999 stress the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disabilities. They also emphasize the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.

(9) Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute strongly to the full participation of citizens in economic, cultural and social life and to realizing their potential.

(10) On 29 June 2000 the Council adopted Directive 2000/43/EC (6) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. That Directive already provides protection against such discrimination in the field of employment and occupation.

(11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social

(1) OJ C 177, 17.4.2000, p. 42.
(2) Opinion adopted on 12 October 2000 (not yet published in the Official Journal).
(3) OJ C 104, 12.4.2000, p. 42.
(4) OJ C 10, 14.2.2000, p. 40.
(5) OJ L 180, 18.12.2000, p. 22.
(6) OJ L 160, 18.12.2000, p. 22.



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Articles 4 (1) and 5 of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation

ARTICLE 4

OCCUPATIONAL REQUIREMENTS

1. NOTWITHSTANDING ARTICLE 2(1) AND (2), MEMBER STATES MAY PROVIDE THAT A DIFFERENCE OF TREATMENT WHICH IS BASED ON A CHARACTERISTIC RELATED TO ANY OF THE GROUNDS REFERRED TO IN ARTICLE 1 SHALL NOT CONSTITUTE DISCRIMINATION WHERE, BY REASON OF THE NATURE OF THE PARTICULAR OCCUPATIONAL ACTIVITIES CONCERNED OR OF THE CONTEXT IN WHICH THEY ARE CARRIED OUT, SUCH A CHARACTERISTIC CONSTITUTES A GENUINE AND DETERMINING OCCUPATIONAL REQUIREMENT, PROVIDED THAT THE OBJECTIVE IS LEGITIMATE AND THE REQUIREMENT IS PROPORTIONATE.

ARTICLE 5

REASONABLE ACCOMMODATION FOR DISABLED PERSONS

IN ORDER TO GUARANTEE COMPLIANCE WITH THE PRINCIPLE OF EQUAL TREATMENT IN RELATION TO PERSONS WITH DISABILITIES, REASONABLE ACCOMMODATION SHALL BE PROVIDED. THIS MEANS THAT EMPLOYERS SHALL TAKE APPROPRIATE MEASURES, WHERE NEEDED IN A PARTICULAR CASE, TO ENABLE A PERSON WITH A DISABILITY TO HAVE ACCESS TO, PARTICIPATE IN, OR ADVANCE IN EMPLOYMENT, OR TO UNDERGO TRAINING, UNLESS SUCH MEASURES WOULD IMPOSE A DISPROPORTIONATE BURDEN ON THE EMPLOYER. THIS BURDEN SHALL NOT BE DISPROPORTIONATE WHEN IT IS SUFFICIENTLY REMEDIED BY MEASURES EXISTING WITHIN THE FRAMEWORK OF THE DISABILITY POLICY OF THE MEMBER STATE CONCERNED.

L 30/14	EN	Official Journal of the European Communities	21.2.2000
COUNCIL DIRECTIVE 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation			
THE COUNCIL OF THE EUROPEAN UNION,			
Having regard to the Treaty establishing the European Community, and in particular Article 13 thereof,			
Having regard to the proposal from the Commission (1),			
Having regard to the Opinion of the European Parliament (2),			
Having regard to the Opinion of the Economic and Social Committee (3),			
Having regard to the Opinion of the Committee of the Regions (4),			
Whereas			
(1)	In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and respect 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, as general principles of Community law.	(2)	The EC Treaty includes among its objectives the promotion of coordination between employment policies of the Member States. To this end, a new employment chapter was incorporated in the EC Treaty as a means of developing a coordinated European strategy for employment to promote a skilled, trained and adaptable workforce.
(2)	The principle of equal treatment between women and men is well established by an important body of Community law, in particular in Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (5).	(3)	The Employment Guidelines for 2000 agreed by the European Council at Helsinki on 10 and 11 December 1999 stress the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disabilities. They also emphasize the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.
(3)	In implementing the principle of equal treatment, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.	(4)	Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute strongly to the full participation of citizens in economic, cultural and social life and to realizing their potential.
(4)	The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognized by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Conventions on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) (32) (33) (34) (35) (36) (37) (38) (39) (40) (41) (42) (43) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54) (55) (56) (57) (58) (59) (60) (61) (62) (63) (64) (65) (66) (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) (78) (79) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (100) (101) (102) (103) (104) (105) (106) (107) (108) (109) (110) (111) (112) (113) (114) 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Legal issue of the case C-795/19, *XX v. Tartu Vangla*

The CJEU was called upon to examine, in particular, the proportionality of national legislation which, in the prison sector, prohibits the continued employment of an employee with a hearing disability. It analyzed the applicability and scope of the Directive 2000/78/EC and:

The existence of a difference of treatment on grounds of disability

Justification of difference of treatment on grounds of disability

Proportionality of a measure such as that taken by Tartu Prison

Equal treatment. Existence of difference of treatment: Comparable groups



- persons who meet the minimum standards of Regulation no 12 and those who do not (direct discrimination; AG, CJEU);
- Persons who have hearing impairments and persons who have visual impairments (Tartu Court of Appeal)
- Persons in comparable situation (Supreme Court)

Note: Our applicant is person who was recruited before the Regulation No 12 entered into force – could not maintain the employment – Directive 2000/78/EC is applicable also to dismissals ...

Existence of justification

- All exceptions of the rules in discrimination cases must be interpreted in a **very narrow way!** (see also *Salasberria Soronda*, C-258/15, 15.11.2016).
- Standard laying down level of auditory acuity is genuine and determining occupational requirement within the meaning of Article 4 (1) of the Directive 2000/78/EC (see also *Wolf*, C-229/08, 12.01.2010 and *Vital Pérez*, C-416/13, 13.11.2014).
- It is not a ground, but characteristic related to one of the grounds - disability - on which the difference of treatment is based ...
- Both, the AG and the CJEU found that the Annex 1 of the Regulation No 12 had a legitimate aim (public order and safety) the difference of treatment was justified, in order of the prison services to be operational, **but ...**
- The Regulation No 12 seems to have stipulated a requirement that is not proportional! (this however has to be examined by the national court which made the referral)



Proportionality: general principles

- Para 54, Opinion of AG: I would point out that, while seeking to promote the integration of persons with disabilities into the labor force, Directive 2000/78 recognizes the importance of not affecting the proper functioning of the sectors concerned. The preamble thereto illustrates, in that regard, the seeking of **a balance between those two imperatives**.
- Recital 18 of the Directive 2000/78 speaks of prison services/recitals 16,17 and 20 about importance of measures to accommodate the needs of disabled people at their workplace (employer must adopt **reasonable accommodation measures**, see *Chacón Navas*, C-13/05, 11.07.2006 unless it is a disproportionate burden)!
- The term reasonable accommodation measures must be interpreted **in a wide sense**



Conclusion: Lessons learned: what is the role of a national judge?



It is a good example, because the case is now back at the Constitutional Review Chamber of the Supreme Court, but in fact much speaks for it that the kind of examination about the possible conflict of the national law with the EU law should have done already at earlier instances.

Nevertheless, it is to welcome that out of procedural economy the Supreme Court asked for a preliminary ruling.

On a national level there was also a question of **legitimate expectation**: the stricter requirements of hearing capacity were not in force when the applicant was recruited by the prison, he was counting on the possibility that he could also seek for an early retirement ... he still had allegedly only two more years to go before his dismissal ... Legitimate expectation seems to be beyond the scope of EU law and could instead rise issues as far as the European Convention on Human Rights and the European Court of Human Rights case law are concerned. However, it might not be necessary to examine this issue ...

The supreme Court decided the case as grand chamber



Supreme Court modified its case law: Judgement of the Supreme Court *en banc* from 15. March 2022, No. 5-19-29:

„In European legal space, significant developments have occurred in interpreting and applying the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as EU law, including the EU Charter of Fundamental Rights. With that in mind, the Court *en banc* deems it necessary to **develop further** the Supreme Court’s previous positions regarding the issue of constitutional review of Estonian law provisions connected with EU law.“



New methodological rule: in order to resolve the case, there is freedom of choice between constitutional review and EU compliance control:

„neither EU law, nor the Constitution nor procedural law give rise to the requirement that courts can check the constitutionality of national law connected with EU law only after they are convinced of its compatibility with EU law. Where a court has misgivings about the constitutionality of an Estonian law provision connected with EU law and falling within the scope of application of EU law, as well as about the compatibility of that provision with EU law, **as a rule the court can weigh which of the two compatibility checks it will follow to resolve the case.** In this regard, it is not ruled out that in resolving the case the court will disapply the Estonian provision on account of its conflict with directly applicable EU law, while simultaneously initiating constitutional review to check the constitutionality of the disappplied Estonian provision.“ (para 47).

However, „when initiating constitutional review in respect of a provision connected with EU law, the prohibition arising from direct effect of EU law on compromising **the primacy, uniformity and effectiveness of EU law** must be taken into account.“ E.g. „when making choices the court must take into account that it may not disapply an Estonian law provision on account of its substantive unconstitutionality if the duty to establish the provision arises unavoidably from EU law.“ The court has a **duty to give reasons.** (ibid.)

Procedural aspects and preliminary references: (para 46)

- ◆ The Court *en banc* maintains its previous position that, in order to disapply a national provision which is contrary to EU law, it is not in itself necessary to initiate constitutional review proceedings.
- ◆ The CJEU has repeatedly emphasized that national courts cannot be obliged to request or await the prior removal of a provision that is contrary to EU law by legislative or other constitutional means (e.g. C-378/17: *An Garda Síochána*, paras 35 and 50; C-564/19: *IS*, para. 80). On that basis, if the court hearing a matter finds that Estonian legislation is constitutional but contrary to a provision of EU law having direct effect then the Estonian law provision must be disapplied without initiating constitutional review proceedings.
- ◆ Even the potential unconstitutionality of a provision does not preclude or restrict the right of the courts to assess the compatibility of national law with EU law and disapply any legislative act on account of its being contrary to EU law with direct effect.
- ◆ Regardless of the possible compatibility or incompatibility of the relevant provision with the Constitution, the Estonian court is entitled (the Supreme Court as the court of last instance, in certain cases, obliged) to seek a preliminary ruling from the CJEU to interpret relevant EU law, including in order to ascertain the compatibility of Estonian law with EU law on the basis of the preliminary ruling (see e.g. C-322/16: *Global Starnet*, paras 21–23; C-564/19: *IS*, para. 70).
- ◆ Also, nothing prevents an Estonian court from referring for a preliminary ruling to check the validity of a secondary EU law provision, including for the CJEU to assess whether secondary law is compatible with primary law, including the Charter.
- ◆ Seeking a preliminary ruling on issues of interpretation of EU law and validity of secondary law may, arising from the principle of loyal cooperation, be particularly necessary in a situation where the court has misgivings about the compatibility of EU law with fundamental constitutional principles.

Observations, reactions:

Confusing or understandable? Plenty of concurring and dissenting opinions ...

Not yet a follow-up, cases about application of the European Convention on Human Rights (ECHR).

In fact, the problem of legitimate expectation was not analysed: national law, EU law, and European Court of Human Rights (ECtHR) ...

EU soft law; goals of national legislature.



COVID-19 cases

Administrative law vs civil law;

Police vs driver of an ambulance;

Civil law chamber asked:"

Date: 12 March 2024

Case Number in Estonia:

2-21-12706

Case: City of Tallinn Riigikohus

Question referred: May Article 14(3) of Directive 2000/54/EC of the European Parliament and of the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work and Annex VII(1) and (2) to that directive, read in conjunction with Article 14(8) of the preamble to that directive, Article 1(1) and Article 3(1) and (2) of that directive, be interpreted as meaning that it is compatible with a provision under which an employer is entitled to require himself to vaccinate workers at risk from biological agents with whom the employer has a valid employment relationship? Questions of clarification: (a) Is vaccination within the meaning of Article 14(3) of Directive 2000/54/EC an occupational health measure which an employer may impose in the context of a valid employment relationship without the consent of the worker exposed to biological hazards? (b) Is the imposition by the employer of a vaccination requirement in an existing employment relationship compatible with Articles 1(3), 6(1) and (2)(a) and (g), 9(1)(a) and (b) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, and Articles 3(1), 31(1) and 52(1) of the Charter of Fundamental Rights of the European Union? Case number before the Court of Justice: C-219/24 Translated with DeepL.com (free version)



Greens EP election

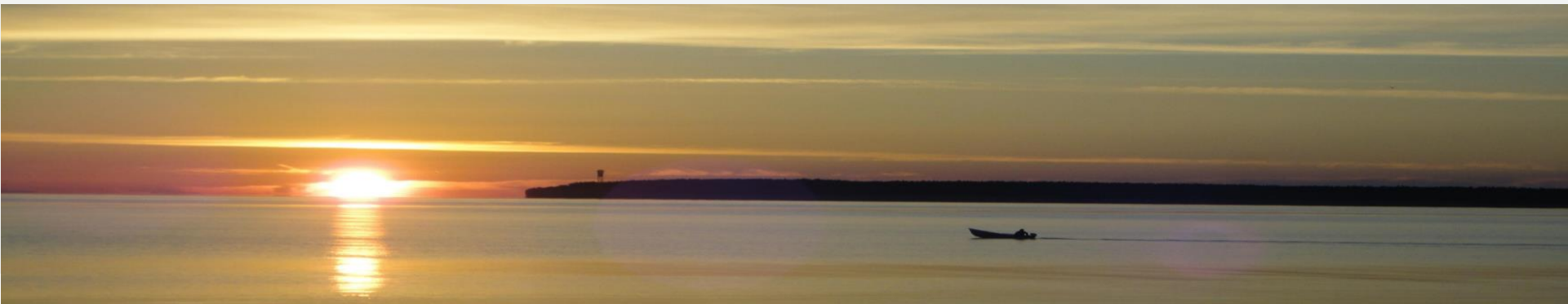


Question for preliminary ruling:

- ♦ May Article 14(3) of Directive 2000/54/EC of the European Parliament and of the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work and Annex VII(1) and (2) to that directive, read in conjunction with Article 14(8) of the preamble to that directive, Article 1(1) and Article 3(1) and (2) of that directive, be interpreted as meaning that it is compatible with a provision under which an employer is entitled to require himself to vaccinate workers at risk from biological agents with whom the employer has a valid employment relationship? Questions of clarification:(a) Is vaccination within the meaning of Article 14(3) of Directive 2000/54/EC an occupational health measure which an employer may impose in the context of a valid employment relationship without the consent of the worker exposed to biological hazards?(b) Is the imposition by the employer of a vaccination requirement in an existing employment relationship compatible with Articles 1(3), 6(1) and (2)(a) and (g), 9(1)(a) and (b) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, and Articles 3(1), 31(1) and 52(1) of the Charter of Fundamental Rights of the European Union?

Some further thoughts

- ◆ Essentially similar fundamental rights are furnished and valued as uniformly as possible = harmonious interpretation.
- ◆ Problem: If the CJEU itself does not find examination considering the Charter necessary: CJEU (Grand Chamber), C-391/20, 7.09. 2022 (Article 16 Charter/49 TFEU).
- ◆ In general: EU institutions bound by the Charter should give good examples.
- ◆ The accession of the EU to the ECHR would create a single unified European legal space.
- ◆ It is not so much the question who has the power of the last word, but the protection of **human rights** themselves, it must be equally well ensured by the Member States, the European Union, the Council of Europe and the courts in the pan-European system, complementing and respecting each other!



Useful tips

- Like the CJEU, a national court has, by interpreting the Charter to consider the case law of the ECtHR on ECHR.
- The Estonian version of the EU founding treaties and the Charter is equally authentic in Estonian as in other official languages of the EU (TEU Art 55 para 1). But besides grammatical interpretation one should look at the aim and general structure of the Charter and *effet utile* of the EU law, also at the principle of harmonious interpretation.
- Estonian courts could interpret the Charter by applying it, but the last word belongs to the CJEU.
- In case of a conflict with the Charter, Estonian law will not be declared invalid, but it will not be applied (supremacy of application).





Value added: EU primary law, new Rights, scope of protection is wider.

LITERATURE (FOR ESONIANS)

INIMÕIGUSTE KÄSIRAAMAT

HARTA KOMMENTEERITUD VÄLJAANDED

GABRIEL TOGGENBURG

Thank you and enjoy your Charter experience!

