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# Fundamental and human rights protection mechanisms in the European Union

Academy of European Law, Riga, 20 June 2024

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Co-funded by the  
European Union

# Overview

1. A (very) brief history
2. The Charter of Fundamental Rights
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6. Discussion

# Warm-up question

## POLL

- Have you ever used the EU Charter of Fundamental Rights in your judicial practice?

# A (very) brief history

In the beginning there was ...

... nothing

- Why? MS had seen no need to include fundamental rights provisions into the Treaty of Rome
  - nonetheless: individuals started to challenge EU measures on the basis that they did not comply with fundamental rights
- Court of Justice then introduced fundamental rights into the EU legal order
  - source: (unwritten) **general principles of EU law** (notably since Case 11/70 *Internationale Handelsgesellschaft*)
  - in practice: reliance on the rights contained in the European Convention on Human Rights
  - thus recognition of *inter alia*
    - right to property
    - freedom of expression
    - freedom of assembly

# The Charter of Fundamental Rights

- Drafted in 1999/2000, but initially not made legally binding (Nice Summit)
- Since 1 December 2009 (entry into force of the Lisbon Treaty) the Charter has been binding:

Article 6 (1) TEU:

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 Charter of Fundamental Rights

- Preamble
- Title I: Dignity
- Title II: Freedoms
- Title III: Equality
- Title IV: Solidarity
- Title V: Citizens' Rights
- Title VI: Justice
- Title VII: General Provisions Governing the Interpretation and Application of the Charter

**NB: The explanations to the Charter [2007] OJ C 303/2**

# The Charter of Fundamental Rights

## Horizontal Charter Provisions

- **Article 51 - Field of application**
- **Article 52 - Scope and interpretation**
- Article 53 - Level of protection
- Article 54 - Abuse of rights

### Article 51 (1) – field of application

- Charter always applies to the EU (i.e. EU measures)
- Charter applies to the Member States only when they are implementing Union Law (more later today)

### Article 52 (1) – limitation clause

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

# The Charter and the general principles

## Interaction with the general principles of EU Law

Article 6 (3) TEU:

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.

I.e. general principles continue to apply in parallel, but with little practical effect



# The Charter and the ECHR

## Article 52 (3) CFR:

In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

## Background:

- The Charter is based on the ECHR, but contains more (and updated) rights

## Consequence:

- ECHR=minimum standard in substance
- Rights that cannot be restricted under the ECHR (absolute rights, e.g. Article 3 ECHR) cannot be restricted under the Charter either!

# The Charter and national constitutions

## National constitutional law

Protection against fundamental rights violations caused by national actors acting on a purely domestic basis

## Potential overlap

National actor violating fundamental rights while implementing EU law

## Charter

Protection against fundamental rights violations caused by the EU and its institutions, agencies, etc.

## Article 53 CFR

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.**

## Case C-299/11 *Melloni*

- where MS is implementing EU law, the Charter standard prevails (even if it is lower than the national standard)

# The Charter and judicial review

## Direct actions (e.g. Article 263 (4) TFEU) before EU courts:

- actions challenging the validity of an EU measure
- Charter can be invoked (as it is always binding on the EU)

## Actions before the national courts

- either: direct challenge to national measure implementing EU law (e.g. asylum applicant challenges the decision to deny him asylum)
- or: indirect challenge as part of different proceedings (e.g. consumer protection case based on EU consumer directive and one of the parties invokes the Charter)
- in both cases the following questions can arise:
  - interpretation of the Charter
  - challenge to the validity of an EU measure
- national court may need to refer the case to the CJEU



# Discussion



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