

# The EU, fundamental Rights, and the Charter of Fundamental rights

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# The long and winding HR road of the EU

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DECIDED to ensure the economic and social progress of their countries by common action in eliminating the barriers which divide Europe,

DIRECTING their efforts to the essential purpose of constantly improving the living and working conditions of their peoples

## Article 2

It shall be the aim of the Community, by establishing a Common Market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increased stability, an accelerated raising of the standard of living and closer relations between its Member States.

RESOLVED to achieve these aims by common action, by the combination of resources, and calling upon the other peoples of Europe who share their ideal to join in their efforts,

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# The competence of the EEC

Article 3 For the purposes set out in the preceding Article, the activities of the Community shall include, under the conditions and with the timing provided for in this Treaty:

- (a) **the elimination, as between Member States, of customs duties and of quantitative restrictions** in regard to the importation and exportation of goods, as well as of all other measures with equivalent effect;
- (b) the establishment of a **common customs tariff** and a common commercial policy towards third countries;
- (c) the abolition, as between Member States, of the **obstacles to the free movement of persons, services and capital**;
- (d) the inauguration of a **common agricultural policy**;
- (e) the inauguration of a **common transport policy**;
- (f) the establishment of a system ensuring that **competition** shall not be distorted in the Common Market;
- (g) the application of procedures which shall make it possible to **co-ordinate the economic policies** of Member States and to remedy disequilibria in their **balances of payments**;
- (h) the approximation of their respective municipal law to the extent necessary for the **functioning of the Common Market**;
- (i) the creation of a European Social Fund in order to **improve the possibilities of employment for workers** and to contribute to the raising of their standard of living;
- (j) the establishment of a European Investment Bank intended to facilitate the **economic expansion of the Community** through the creation of new resources; and
- (k) the association of overseas countries and territories with the Community with a view to **increasing trade** and to pursuing jointly their effort towards economic and social development.



# Any Treaty-based right?

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- Article 157 (ex Article 141 TEC)

Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

Otherwise? Quick due diligence: protection of HR is not a matter on which EU exercises any competence.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012M%2FTXT> TEU Article 3

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT> TFEU 2/3/4/5/6

**Judgment of the Court of 15 July 1960. Präsident Ruhrkolen-Verkaufsgesellschaft mbH, Geitling Ruhrkohlen-Verkaufsgesellschaft mbH, Mausegatt Ruhrkohlen-Verkaufsgesellschaft mbH and I. Nold KG v High Authority of the European Coal and Steel Community. Joined cases 36, 37, 38-59 and 40-59.**

*THE APPLICANT SUPPORTS ITS ARGUMENTS WITH GERMAN CASE-LAW ON THE INTERPRETATION OF ARTICLE 14 OF THE BASIC LAW OF THE FEDERAL REPUBLIC, WHICH GUARANTEES PRIVATE PROPERTY .*

*IT IS NOT FOR THE COURT, WHOSE FUNCTION IS TO JUDGE THE LEGALITY OF DECISIONS ADOPTED BY THE HIGH AUTHORITY AND, AS OBVIOUSLY FOLLOWS, THOSE ADOPTED IN THE PRESENT CASE UNDER ARTICLE 65 OF THE TREATY, TO ENSURE THAT RULES OF INTERNAL LAW, EVEN CONSTITUTIONAL RULES, ENFORCED IN ONE OR OTHER OF THE MEMBER STATES ARE RESPECTED .*

*THEREFORE THE COURT MAY NEITHER INTERPRET NOR APPLY ARTICLE 14 OF THE GERMAN BASIC LAW IN EXAMINING THE LEGALITY OF A DECISION OF THE HIGH AUTHORITY .*

*P . 439*

*MOREOVER COMMUNITY LAW, AS IT ARISES UNDER THE ECSC TREATY, DOES NOT CONTAIN ANY GENERAL PRINCIPLE, EXPRESS OR OTHERWISE, GUARANTEEING THE MAINTENANCE OF VESTED RIGHTS .*



# Mind your own business?

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Problem: EC has no power to set rules on human rights. But EC acts might affect the enjoyment of HR within Member States.

Also: primacy of EU law means that, in principle, HR-breaching EU acts prevail on domestic law, even constitutional law ([\*Internationale Handelsgesellschaft\*](#))

Two possible solutions:

- HR review of EU acts by domestic courts, or
- HR review of EU acts by EU courts, but... [read IHG, para. 4]

# The threat of the BVerfG and the reckoning of the CJEU

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**2 BvL 52/71 - Solange I, 29 May 1974 - BVerfGE 37 (proportionality of forfeiture of export deposit)**

As long as [*Solange*] the integration process has not progressed so far that Community law receives a catalogue of fundamental rights decided on by a parliament and of settled validity, which is adequate in comparison with the catalogue of fundamental rights contained in the Basic Law, a reference by a court of the Federal Republic of Germany to the Federal Constitutional Court in judicial review proceedings, following the obtaining of a ruling of the European Court under Article 177 of the Treaty, is admissible and necessary if the German court regards the rule of Community law which is relevant to its decision as inapplicable in the interpretation given by the European Court, because and in so far as it conflicts with one of the fundamental rights of the Basic Law.<sup>36</sup>



# Case 44/79, Liselotte Hauer v. Land Rheinland Pfalz , 1979 E.C.R. 3727, [1980] 3 C.M.L.R. 42 (1979)



Attacking a regulation for its validity.

What kind of proceedings?

Check

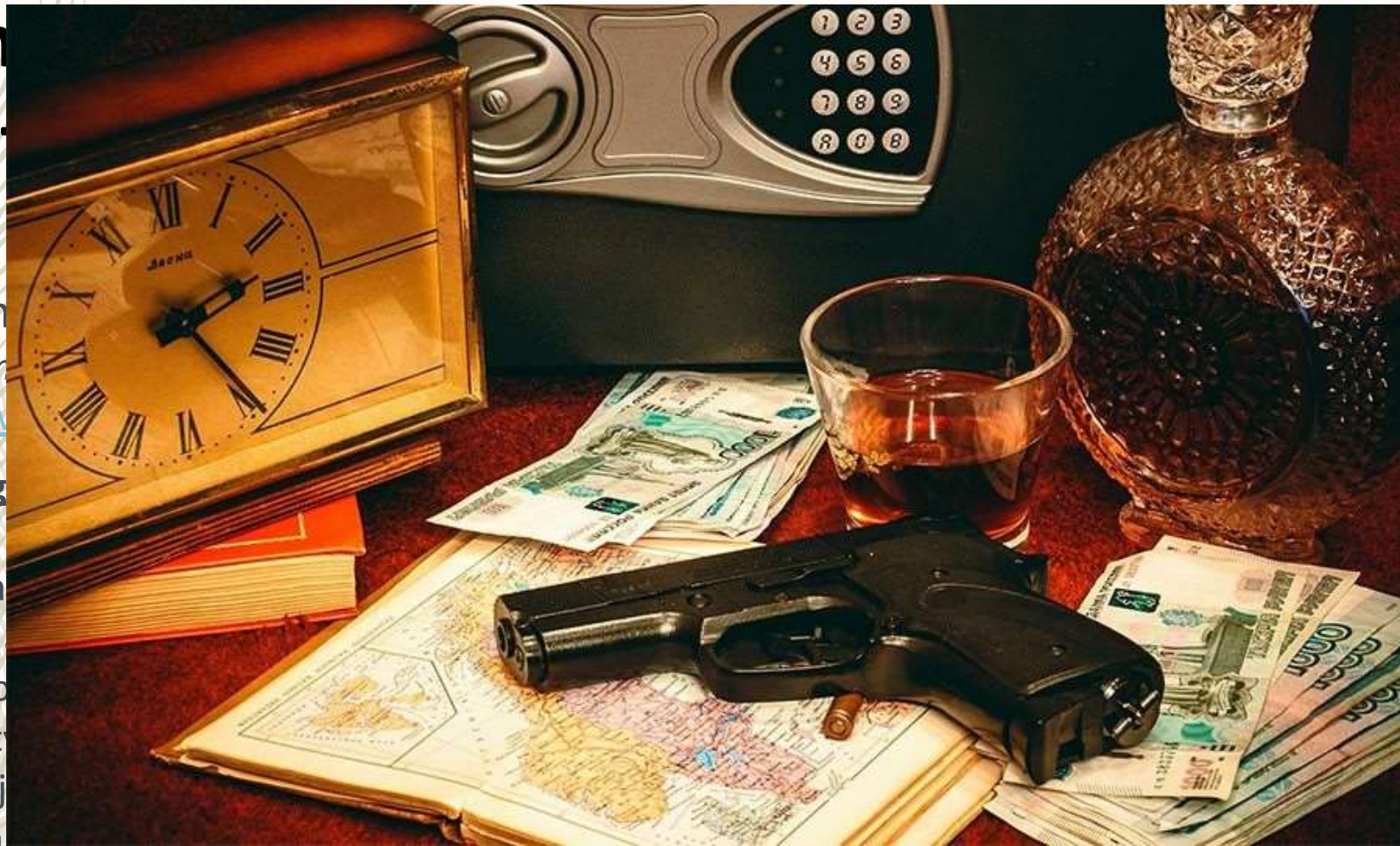
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61979CJ0044>

Read para. 13-15.

# Coming constitution

The German  
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<https://law>

“...so long  
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# Equivalent protection

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Source of EU law-based fundamental and human rights?

Unwritten general principles.

- Inspired by common constitutional traditions of MS
- Inspired by international agreements of the MS
  - European Convention on Human Rights

30 Thirdly and lastly, the defendants in the main proceedings maintain that a prohibition such as the one at issue is in breach of fundamental rights, especially of freedom of expression and the freedom to receive and impart information, enshrined in particular in Article 10(1) of the European Convention on Human Rights.

31 According to, *inter alia*, the judgment of 18 June 1991 in *Elliniki Radiophonia Tileorasi* (Case C-260/89 *Elliniki Radiophonia Tileorasi v Dimotiki Etairia Pliroforissis* [1991] ECR I-2951, paragraph 42), where national legislation falls within the field of application of Community law the Court, when requested to give a preliminary ruling, must provide the national court with all the elements of interpretation which are necessary in order to enable it to assess the compatibility of that legislation with the fundamental rights - as laid down in particular in the European Convention on Human Rights - the observance of which the Court ensures. However, the Court has no such jurisdiction with regard to national legislation lying outside the scope of Community law. In view of the facts of the case and of the conclusions which the Court has reached above with regard to the scope of Articles 59 and 62 of the Treaty, that would appear to be true of the prohibition at issue before the national court.



# Internal review – External review of HR compliance of EU action

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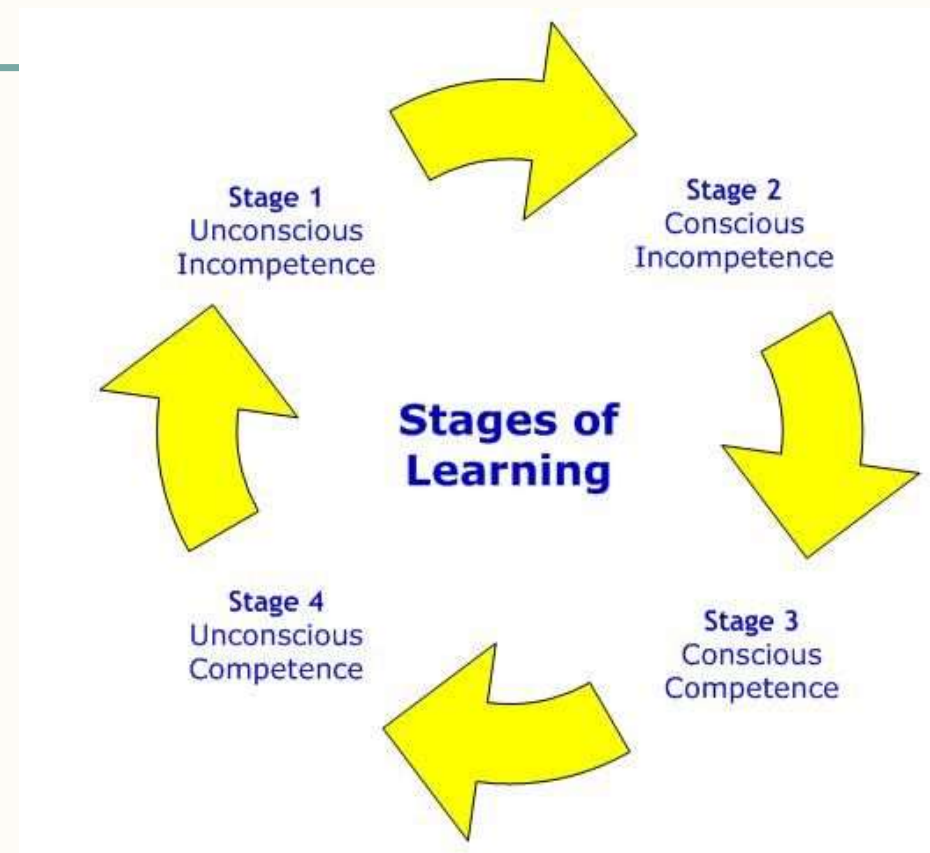
First angle: the EU ties its own hands. Little by little commits to full HR compliance, and develops a system of internal accountability (mainly towards MS)

Second angle: the EU's commitments to HR, in particular from constitutional traditions and international sources, creates external accountability (TRANSFER OF RESPONSIBILITY, NOT COMPETENCE)

- Domestic courts – largely fended off
- International courts – mainly the ECtHR

# Four stages of integration of HR-limits into EU law

- I. Denial (Geitling, Stork, Sgarlata)
- II. Commitment in principle (unwritten general principles, Nold, Hauer, Stauder, IHL, etc)
- III. Consolidation of II. into Treaty Law (since Amsterdam, now Art. 6 TEU)
- IV. Charter, first as declaration (2000) then as Treaty law.
- V? accession to the ECtHR?



# Review of validity of EU (secondary) law for HR compatibility

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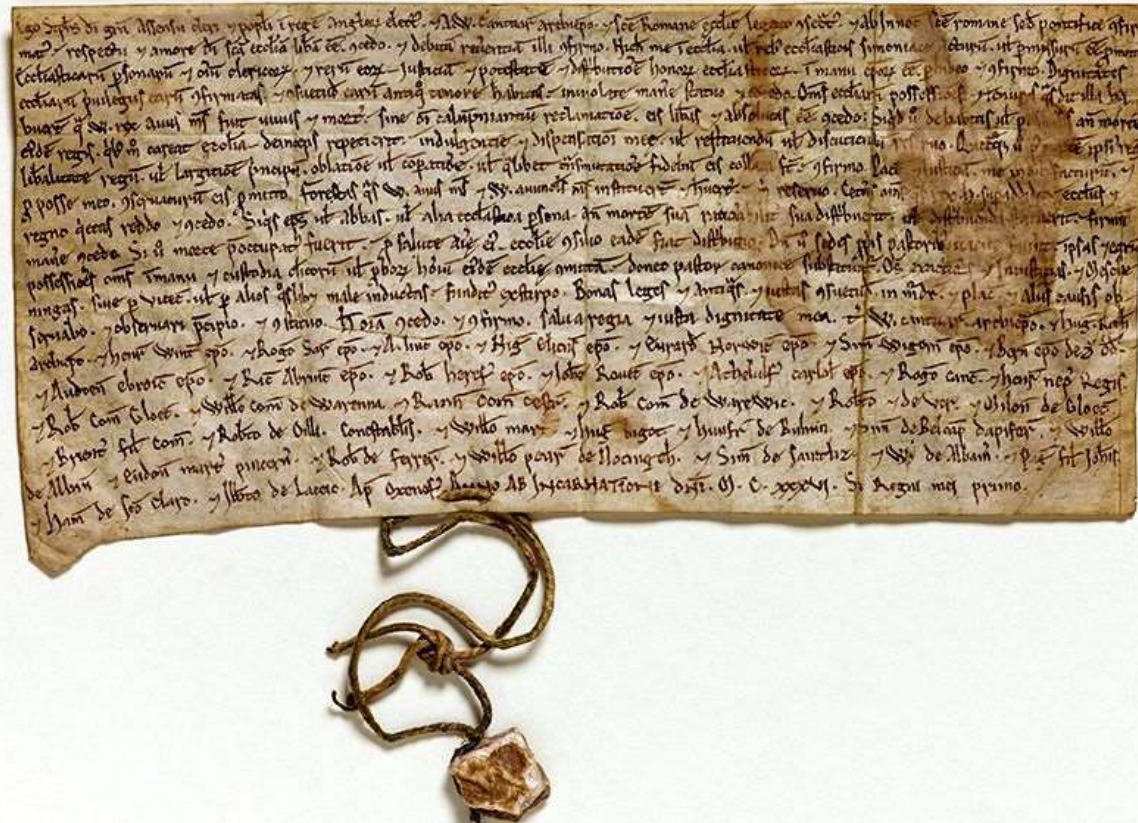
If HR norms (either as general principles or Charter) are primary norms of EU law, they can be used to test the validity of secondary norms:

- Tobacco directive
- Digital Rights Ireland
- Test-Achats

Remember: validity of EU measures can be challenged either in [annulment proceedings](#) (Art. 263 TFEU) or in a preliminary question (Art. 267 TFEU). Not in domestic courts (Foto Frost).



# Enter the Charter





# THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION:

the *travaux préparatoires* and  
selected documents

EDITED BY

**Niall COGHLAN and Marc STEIERT**

## Craving to know more?

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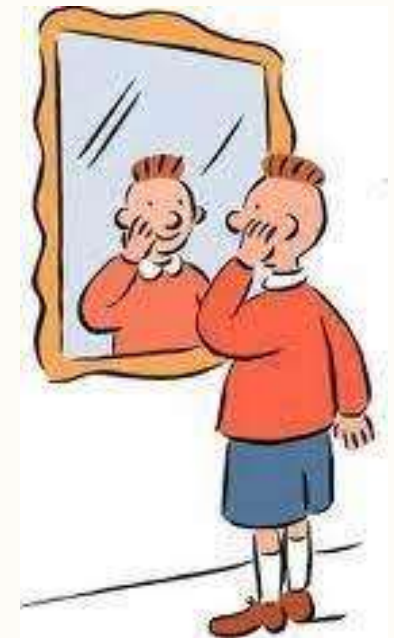
<https://cadmus.eui.eu/handle/1814/68959>



# Legal value

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- Solemn proclamation + legal status deliberately left undetermined (2000), **BUT..**
- 'same legal value as the treaties' (2009), **BUT...**





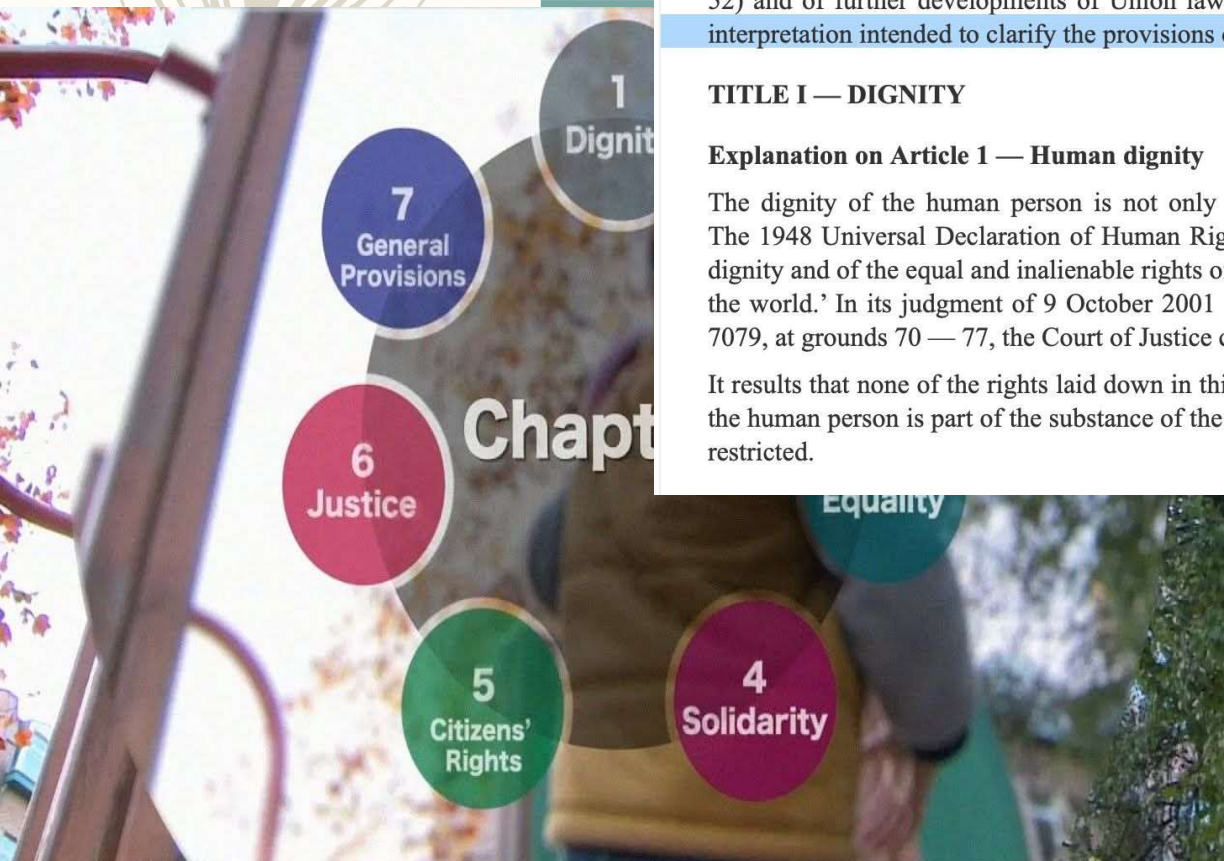
# The Charter does not create anything

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.



~ Antoine Lavoisier

# The Charter's s



Text

14.12.2007

EN

Official Journal of the European Union

C 303/17

## EXPLANATIONS <sup>(1)</sup> RELATING TO THE CHARTER OF FUNDAMENTAL RIGHTS

(2007/C 303/02)

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

### TITLE I — DIGNITY

#### Explanation on Article 1 — Human dignity

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.' In its judgment of 9 October 2001 in Case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR I-7079, at grounds 70 — 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

- 'Justice' (Title VI, Articles 47–50) ,
- 'General Provisions Governing the Interpretation and Application of the Charter' (Title VII, Articles 51–54).

# TITLE I - Dignity

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Fundamentals rights: human dignity, right to life, right to integrity of the person, prohibition of torture, prohibition of slavery and force labour

Note: no space for exceptions!

Examples:

- *Omega Spielhallen* (laser games)
- *Dynamic Medien (Japanese anime)* was similar:

<https://fra.europa.eu/en/caselaw-reference/cjeu-c-24406-judgment>





# Omega (C-36/02)

- Omega operated a 'laserdrome' in Bonn
- Equipment supplied by UK company
- German authorities banned the operation
- Argument: firing on human targets contrary to human dignity as protected by German Constitution

Court:

- **Restriction** of freedom to provide services, Art 56 TFEU (clash)
- Justified since public policy exception applies: genuine and sufficiently serious threat to a fundamental interest of society
- Margin of discretion for MS, para 31: the specific circumstances which may justify recourse to the concept of public policy may vary from one country to another [...]. [...] national authorities must therefore be allowed a margin of discretion [...]

# TITLE I - Dignity

*Dynamic Medien* was similar:

<https://fra.europa.eu/en/caselaw-reference/cjeu-c-24406-judgment>

Note: no space for exceptions!





# TITLE II - Freedoms

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Development of “privacy and family life” into different provisions, see 7-8-9.

Keep an eye on Articles 15-17: there the Charter throws in rights deriving from Treaty law relating to the Common Market.

Conditions of EU law starts seeping into these rights and freedoms (Article 52(3)).

Already condition of EU law starts seeping into these rights and freedoms.





## Example: Denise McDonagh v Ryanair



# TITLE III - Equality

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- Article 20: equality before the law
- Article 21: 'Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, **religion or belief, political or any other opinion**, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.' □ compare with Article 19 TFEU
- Article 24, rights of the child. Relevance to EU law?
  - AFSJ, recognition of judgments: see McB (Case C-400/10 PPU)
  - Rights of the elderly (25) and integration of persons with disabilities (26)

# Title IV: Solidarity



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Find the differences between the various rights, with respect to link with EU law

- Labour rights □ fundamental rights but also linked to fair competition among the Member States
- Economic-related rights; Health case; Environmental protection; Consumer Protection;
- Can they have (horizontal) direct effect?
  - Compare *AMS* (article 27) and *Max-Planck/Bauer* (Article 31(2))



# Title V: Citizens



Image courtesy of: <http://www.bremaininSpain.com>

-In some sense, these are the only rights created by EU law for EU citizens.-Compare these rights with Article 21 TFEU

Examples: Right to vote and to stand as a candidate at elections to the European Parliament (Art. 39) and at municipal elections (Art. 40).

-Right to good administration (Art. 41)

# Title VI: Justice

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Relevance for EU law?

Remember: not self-standing rights, but limits to the EU action.

AFSJ has repercussions on criminal liability and criminal trials in the MS □ we need minimum guarantees

- directives introducing minimum standards on procedural rights in criminal proceedings (e.g., Directive (EU) 2016/343)
- European Arrest Warrant cases

## CCC: Multi-source equivalent norms



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# How can MSENs apply to the same matter?

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Remember: it is (almost) all about State measures.

- By definition, State measures must comply with the Constitution
- Within the field of application of EU law, or when they might breach EU law, State measures must comply with EU fundamental rights sources (CFR)
- By definition, State measures must comply with the Convention, including some of the State measures that implement EU law, if there is significant discretion or doubt of serious breach.

### *Article 53*

#### **Level of protection**

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.

#### **Safeguard for existing human rights**

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.



## Different content?

3. 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.

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.

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# Application of ECHR to EU measures

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Simple story: EU is not party to ECHR, case inadmissible

If domestic implementation is challenged, tricky:

- Hold MS accountable for having relinquished control

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<https://eur-lex.europa.eu/EN/TX>

ECHR

*24 The provisions of Regulation No 990/93 contribute in particular to the implementation at Community level of the sanctions against the Federal Republic of Yugoslavia adopted, and later strengthened, by several resolutions of the Security Council of the United Nations. The third recital in the preamble to Regulation No 990/93 states that "the prolonged direct and indirect activities of the Federal Republic of Yugoslavia (Serbia and Montenegro) in, and with regard to, the Republic of Bosnia-Herzegovina are the main cause for the dramatic developments in the Republic of Bosnia-Herzegovina"; the fourth recital states that "a continuation of these activities will lead to further unacceptable loss of human life and material damage and to a further breach of international peace and security in the region"; and the seventh recital states that "the Bosnian Serb party has hitherto not accepted, in full, the peace plan of the International Conference on the Former Yugoslavia in spite of appeals thereto by the Security Council".*

*25 It is in the light of those circumstances that the aim pursued by the sanctions assumes especial importance, which is, in particular, in terms of Regulation No 990/93 and more especially the eighth recital in the preamble thereto, to dissuade the Federal Republic of Yugoslavia from "further violating the integrity and security of the Republic of Bosnia-Herzegovina and to induce the Bosnian Serb party to cooperate in the restoration of peace in this Republic".*

*26 As compared with an objective of general interest so fundamental for the international community, which consists in putting an end to the state of war in the region and to the massive violations of human rights and humanitarian international law in the Republic of Bosnia-Herzegovina, the impounding of the aircraft in question, which is owned by an undertaking based in or operating from the Federal Republic of Yugoslavia, cannot be regarded as inappropriate or disproportionate.*




Image Copyright © Artur Badoň



155. In the Court's view, State action taken in compliance with such legal obligations is justified as long as the relevant organisation is considered to protect fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides (see *M. & Co.*, cited above, p. 145, an approach with which the parties and the European Commission agreed). By “equivalent” the Court means “comparable”; any requirement that the organisation's protection be “identical” could run counter to the interest of international cooperation pursued (see paragraph 150 above). However, any such finding of equivalence could not be final and would be susceptible to review in the light of any relevant change in fundamental rights protection.

156. If such equivalent protection is considered to be provided by the organisation, the presumption will be that a State has not departed from the requirements of the Convention when it does no more than implement legal obligations flowing from its membership of the organisation.

However, any such presumption can be rebutted if, in the circumstances of a particular case, it is considered that the protection of Convention rights was manifestly deficient. In such cases, the interest of international cooperation would be outweighed by the Convention's role as a “constitutional instrument of European public order” in the field of human rights (see *Loizidou v. Turkey* (preliminary objections), judgment of 23 March 1995, Series A no. 310, pp. 27-28, § 75).





Home

## Arrestato Stefano Melloni

BANCAROTTA 'PATRIMONIUM



{{IMG\_SX}}Roma, 28 agosto 2011. Antequera il bancarottiere Stefano Melloni, della società di promozione finanziaria della Compagnia di Cento (Ferrara), Mariaemanuela Guerra, dopo essere stata nota - anche grazie alla collaudata - arrestato.



## Reports of Cases

### JUDGMENT OF THE COURT (Grand Chamber)

26 February 2013\*

(Police and judicial cooperation in criminal matters — European arrest warrant — Surrender procedures between Member States — Decisions rendered at the end of proceedings in which the person concerned has not appeared in person — Execution of a sentence pronounced in absentia — Possibility of review of the judgment)

In Case C-399/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Constitucional (Spain), made by decision of 9 June 2011, received at the Court on 28 July 2011, in the proceedings

**Stefano Melloni**

v

**Ministerio Fiscal,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, L. Bay Larsen, T. von Danwitz, A. Rosas and E. Jarašiūnas, Presidents of Chambers, E. Levits, A. Ó Caoimh, J.-C. Bonichot, M. Safjan (Rapporteur) and C.G. Fernlund, Judges,

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# Thanks!

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Any question?

[filippo.fontanelli@ed.ac.uk](mailto:filippo.fontanelli@ed.ac.uk)