

Introductory overview of key underlying principles: Titles I, II, III

The Charter of Fundamental Rights ERA Training Seminar

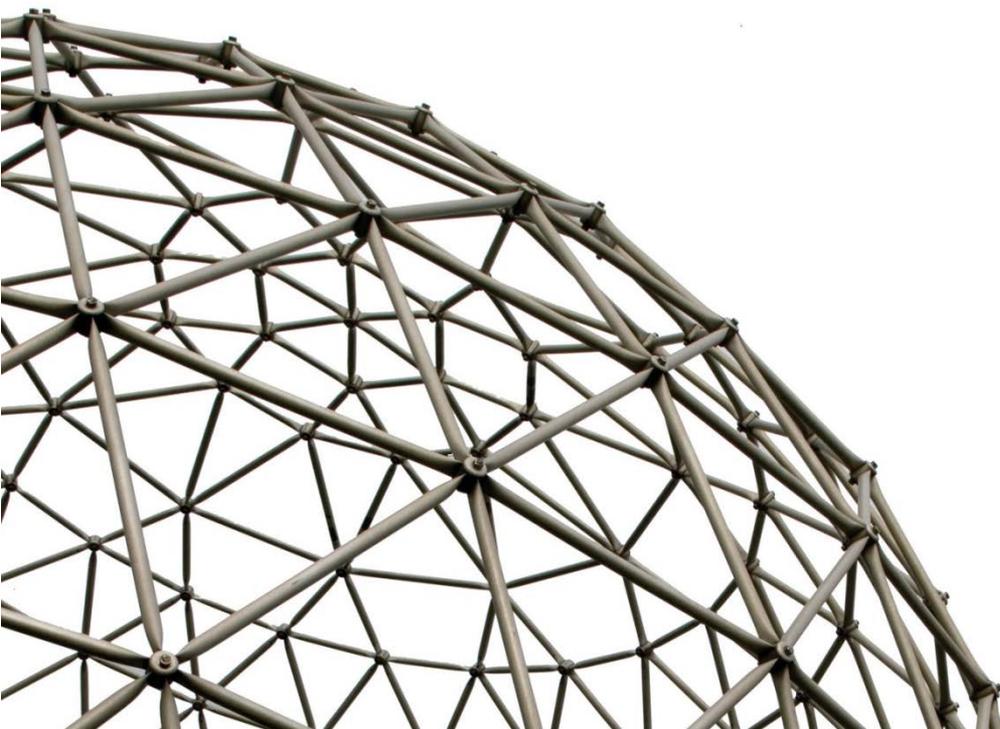
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Outline

- Introduction: Structure of the Charter
- Overview of the rights guaranteed in Titles I, II, III
 - Title I: dignity
 - Title II: freedoms
 - Title III: equality
- Interpretation of the rights in light of the ECHR, Art. 52 (3)
- Limits to these rights: Art. 52 (1)
- Application in the case law of the CJEU



Introduction: Structure of the Charter



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

Introduction: Structure of the Charter

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

Title I: Dignity

Article 1: Human dignity

Article 2: Right to life

Article 3: Right to the integrity of the person

Article 4: Prohibition of torture and inhuman or degrading treatment
or punishment

Article 5: Prohibition of slavery and forced labour

Title II: Freedoms



Article 6: Right to liberty and security

Article 7: Respect for private and family life

Article 8: Protection of personal data

Article 9: Right to marry and right to found a family

Article 10: Freedom of thought, conscience and religion

Article 11: Freedom of expression and information

Article 12: Freedom of assembly and of association

Title II: Freedoms



Article 13: Freedom of the arts and sciences

Article 14: Right to education

Article 15: Freedom to choose an occupation and right to engage
in work

Article 16: Freedom to conduct a business

Article 17: Right to property

Article 18: Right to asylum

Article 19: Protection in the event of removal, expulsion or
extradition

Title III: Equality



Article 20 Equality before the law

Article 21 Non-discrimination

Article 22 Cultural, religious and linguistic diversity

Article 23 Equality between women and men

Article 24 The rights of the child

Article 25 The rights of the elderly

Article 26 Integration of persons with disabilities

Limits to Charter Rights: Article 52 (1)



‘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.’

- Same limitation provision for all rights
- Test: Measure is justified if:
 - Provided for by law
 - Genuinely meets objective of a general interest
 - Necessary
 - Proportionate
 - Respects essence of the right

Title I: Dignity

Article 1: Human dignity

Article 2: Right to life

Article 3: Right to the integrity of the person

Article 4: Prohibition of torture and inhuman or degrading treatment
or punishment

Article 5: Prohibition of slavery and forced labour

Title I: Dignity

Article 4: Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Example: NS v Home Secretary C-411/10 and 493/10

- Asylum seeker (Afghan national) first entered EU through Greece
- Ended up in UK where he applied for asylum
- Art. 3 Regulation 343/2003 (Dublin Regulation):
 - MS may transfer asylum seekers back to the MS through which they first entered the EU (here: Greece)
 - But MS may examine asylum application if they so choose

Title I: Dignity

Question:

- Does a MS have to process an asylum application where the transfer to the responsible State would expose the asylum claimant to a risk of violation of his fundamental rights?

Background:

- Vast majority of asylum seekers enter EU via Greece
- They have to live in appalling conditions

Court:

- Article 4 CFR prohibits inhuman and degrading treatment
- Member States **must not** transfer an asylum seeker back to the 'Member State responsible' under the Dublin Regulation where he would face a real risk of being subjected to inhuman and degrading treatment

Title II: Freedoms



Article 6: Right to liberty and security

Article 7: Respect for private and family life

Article 8: Protection of personal data

Article 9: Right to marry and right to found a family

Article 10: Freedom of thought, conscience and religion

Article 11: Freedom of expression and information

Article 12: Freedom of assembly and of association

Article 6: Right to liberty and security

Everyone has the right to liberty and security of person.

Example:

- Radu (C-396/11)
 - Does a state which executes a European Arrest Warrant (EAW) interfere with the right under Article 6 CFR?
 - If so: must this interference satisfy the proportionality test laid down in Art. 52 (1) CFR?
- CJEU dodged this question
- But clear that EAW poses serious questions in this respect.

Article 7 Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

- Relevance of Article 7:
 - Child custody/abduction cases: *McB v L.E.* (C-400/10 PPU)
 - Should an unmarried father's right to custody be automatic?
 - Court: Art 7 right of father to be balanced with right of child under Art 24 and right of mother to free movement under the Treaties
 - Search of business premises
 - Are they protected as 'home'?
 - Probably, cf. *C-94/00 (Roquette-Frères)*

Article 8 Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

[...]

Potential relevance:

- Challenges to EU legislation:
 - data retention directive 2006/24/EC
 - access to passenger name records
- Scarlet (C-70/10)
 - Art. 8 used as a competing interest in intellectual property case

Title II: Freedoms



Article 13: Freedom of the arts and sciences

Article 14: Right to education

Article 15: Freedom to choose an occupation and right to engage in work

Article 16: Freedom to conduct a business

Article 17: Right to property

Article 18: Right to asylum

Article 19: Protection in the event of removal, expulsion or extradition

Article 16 Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

- Relevance:
 - E. g. McDonagh v Ryanair (C-12/11)
 - Ash cloud in 2010: Ryanair did not provide support for one of its passengers
 - Argued that obligation under EU Regulation to be read in light of Art 16 CFR
 - Court: Art 16 not absolute; to be balanced with right of consumers under Art 38 CFR
 - Case shows that potentially far-reaching right which might be of relevance in many disputes
 - Also in Scarlet: invoked to balance with competing rights

Article 17 Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
2. Intellectual property shall be protected.

Relevance:

- Potentially far-reaching, whenever property is at stake (e.g. payment of a fine, etc)
 - Cf. Ryanair case: was invoked alongside Art 16
- Right to intellectual property: cf. Scarlet

Case C-70/10 Scarlet

Facts:

- Application for injunction by company representing authors, composers, etc. in authorising the use of their copyright-protected work to third parties (SABAM) that Scarlet (internet service provider) should block activities of its users which infringe copyright (in particular peer-to-peer sharing of music, etc.)

Question:

- Does EU law (five Directives) interpreted in light of CFR preclude the court from making such an injunction?

Analysis:

Rights: Art. 17 (2) v Art. 16 (Scarlet) and Art. 8,11 (customers)

Court: On balance: injunction precluded by EU law

Case C-70/10 Scarlet

Court:

- Recognised SABAM's right to have IP protected, Art. 17 (2)
 - But not absolute, i.e. subject to limitations
- Balance with competing rights
 - Scarlet's freedom to conduct a business
 - Would be seriously infringed if Scarlet were forced to install a costly computer system to block certain activities
 - Customers' rights to data protection and freedom to receive and impart information (Art. 8 and 11)
 - IP addresses would have to be collected (=data)
 - And restriction on right to receive and impart information as system might not distinguish adequately between lawful and unlawful content

Title III: Equality



Article 20 Equality before the law

Article 21 Non-discrimination

Article 22 Cultural, religious and linguistic diversity

Article 23 Equality between women and men

Article 24 The rights of the child

Article 25 The rights of the elderly

Article 26 Integration of persons with disabilities

Title III: Equality



Article 20 Equality before the law

Everyone is equal before the law.

Article 21 Non-discrimination

1. 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.

2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Relevance:

- Similarity of Art 21 to Equality Directives based on Art. 19 TFEU
 - Interpretation of those Directives in light of Art 21 CFR
 - Case C-236/09 Test Achats

Article 23 Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Relevance:

- Similar to Art. 157 TFEU
- Case C-236/09 Test Achats

Case C-236/09 Test-Achats



Facts:

- Directive 2004/113 on equal treatment of men and women in the access to and supply of goods and services provided exception in Art. 5 (2) for insurance contracts without time limit.

Question: is exception compatible with Art. 21 and 23 CFR?

Analysis:

- Direct discrimination between men and women

Court:

- Equal treatment: comparable situations must not be treated differently and different situations must not be treated in the same way, unless such treatment is objectively justified
- Purpose of Directive was application of unisex rules on insurance premiums and benefits

Case C-236/09 Test-Achats



Court:

- In light of these aims of the Directive, an exemption which would allow derogation from equal treatment indefinitely works against the achievement of the purpose of the Directive and is incompatible with Art 21 and 23 CFR

Analysis:

- Court confirmed its stance on what constitutes equal treatment
- Court did not clarify the relationship between Art. 21/23 CFR and the equality provisions in the TFEU
- Notable that Court put emphasis on an argument relating to an inconsistency within the Directive rather than striking out the provision based on Art. 21/23 alone: leeway?
- Clearer: AG Kokott: If EU takes 'action' under Art 19(1) TFEU to combat discrimination then it has to do so in accordance with the requirements of the principle of equal treatment. www.surrey.ac.uk

Article 24 The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being.

They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Relevance: custody cases

- McB (C-400/10 PPU): Court took child's best interest into account

Thank you for listening.