

## The scope of application of the EU Charter in national legal orders (Part 1)

Academy of European Law, 12 October 2021

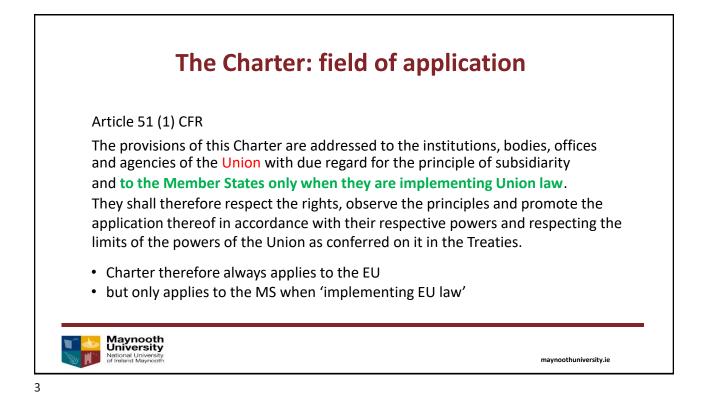
Prof Tobias Lock, Jean Monnet Chair in EU Law and Fundamental Rights @tobiaslock

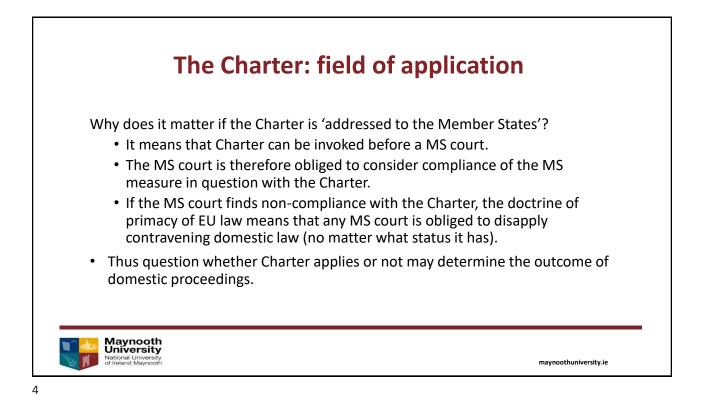


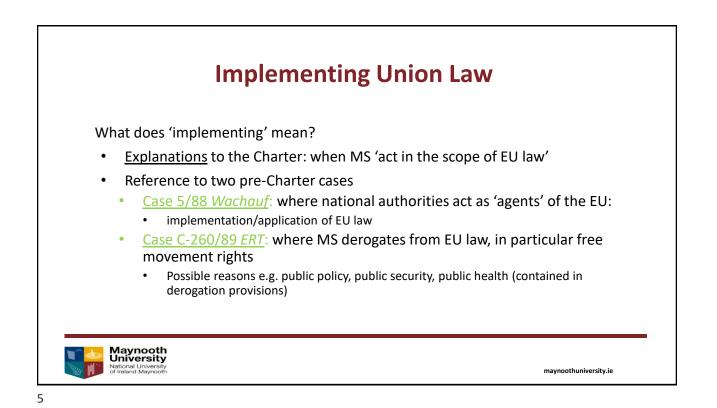
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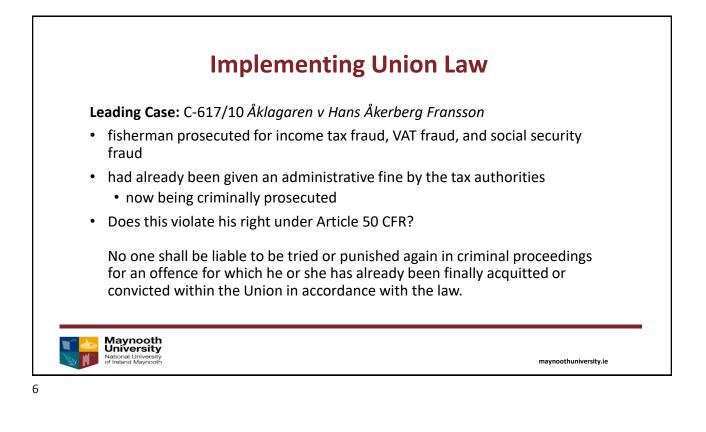


	Over	view
Part 1	: The Basics	Part 2: The Detail
Ar 2. Im	eld of application of the Charter: ticle 51 (1) CFR plementing EU Law plementing EU Law: Criteria	<ul><li>4. The Scope of EU Law</li><li>5. Simple Cases</li><li>6. Discretion</li><li>7. Broad Interpretation of the Scope of EU Law</li></ul>
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Implementing Union Law

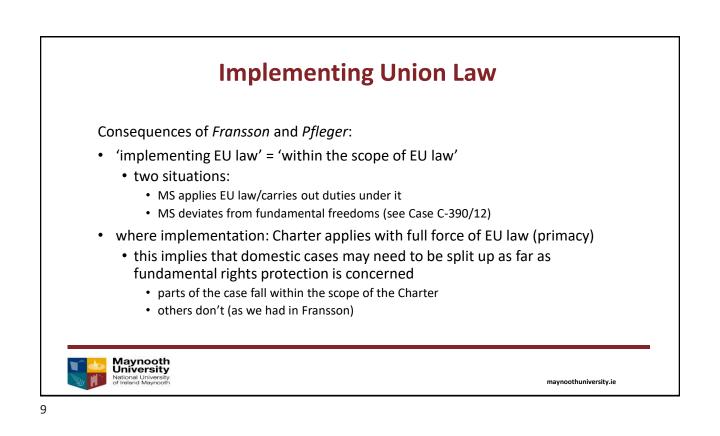
Case C-390/12 Pfleger

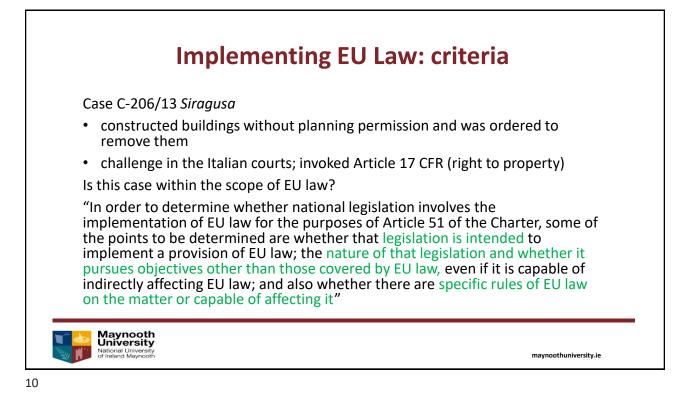
- Facts:
  - prohibition of games of chance in Austria
  - authorities seized gaming machines and imposed fines on the operators
- interference with freedom to provide services and also Charter rights?
  - in particular right to conduct a business and right to property (Art 15-17 CFR)?
- Court: Charter applies where national legislation falls within the scope of EU law It follows that "where a Member State relies on overriding requirements in the public interest in order to justify rules which are liable to obstruct the exercise of the freedom to provide services, such justification, provided for by EU law, must be interpreted in the light of the general principles of EU law, in particular the fundamental rights henceforth guaranteed by the Charter".



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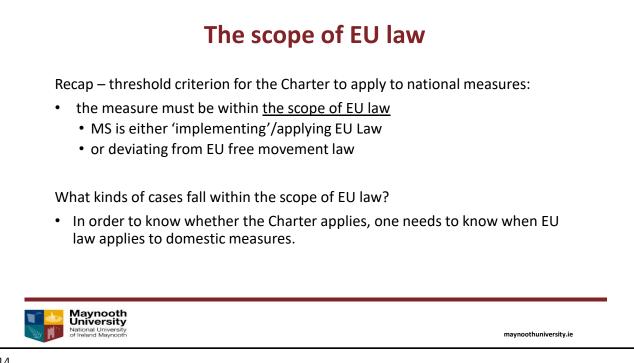
## The scope of application of the EU Charter in national legal orders (Part 2)

Academy of European Law, 12 October 2021

Prof Tobias Lock, Jean Monnet Chair in EU Law and Fundamental Rights @tobiaslock

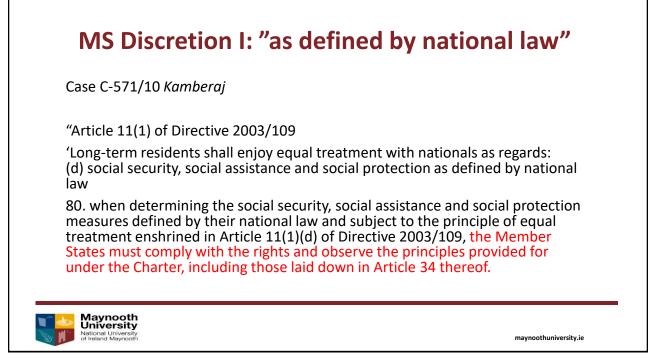


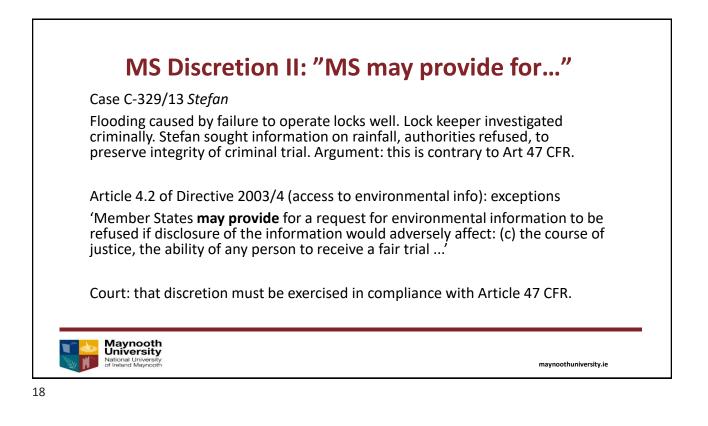
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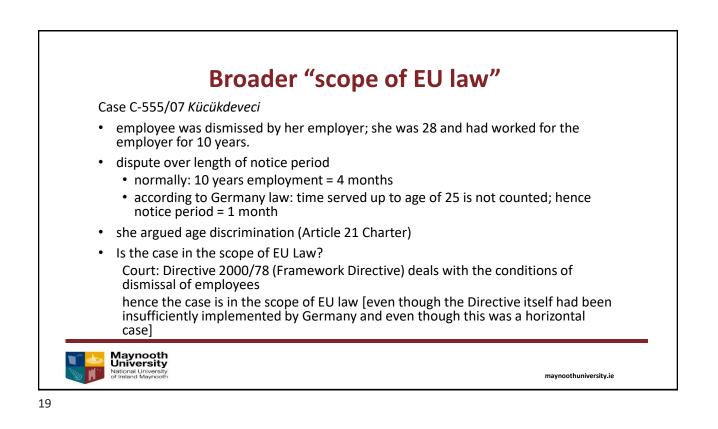












	Broader "scope of EU law"
Ca	ase C-555/07 Kücükdeveci
•	employee was dismissed by her employer; she was 28 and had worked for the employer for 10 years.
•	<ul> <li>dispute over length of notice period</li> <li>normally: 10 years employment = 4 months</li> <li>according to Germany law: time served up to age of 25 is not counted; hence notice period = 1 month</li> </ul>
•	she argued age discrimination (Article 21 Charter)
•	Is the case in the scope of EU Law? Court: Directive 2000/78 (Framework Directive) deals with the conditions of dismissal of employees (Article 3 (1) (c)) hence the case is in the scope of EU law [even though the Directive itself had been insufficiently implemented by Germany and even though this was a horizontal case]
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72 Admittedly, the legislative measures that are referred to in Article 15(1) of Directive 2002/58 concern activities characteristic of States or State authorities, and are unrelated to fields in which individuals are active [...]. Moreover, the objectives which, under that provision, such measures must pursue, such as safeguarding national security, defence and public security and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communications system, overlap substantially with the objectives pursued by the activities referred to in Article 1(3) of that directive [i.e. those that are excluded from the scope of the Directive].

73 However, having **regard to the general structure** of Directive 2002/58, the factors identified in the preceding paragraph of this judgment do not permit the conclusion that the legislative measures referred to in Article 15(1) of Directive 2002/58 are excluded from the scope of that directive, for otherwise that provision would be deprived of any purpose. Indeed, Article 15(1) necessarily presupposes that the national measures referred to therein, such as those relating to the retention of data for the purpose of combating crime, fall within the scope of that directive, since it expressly authorises the Member States to adopt them only if the conditions laid down in the directive are met.



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