

# Recent jurisprudence of CJEU based on the EU Charter and the ECHR. How the Court grounds its judgements on fundamental human rights?

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# Fundamental rights in the EU. Ante and post Lisbon

- Protected in the EU as general unwritten principles of EU law

- Interpretation of this rights – inspiration from the constitutional traditions of the MS and from the international treaties of fundamental rights



- Charter

- General principles of EU law, including ECHR

# EU and ECHR

## ECHR does not impose obligations to EU – as an international treaty

- Even though a MS could be found international responsible for violating a fundamental rights granted by the ECHR, in participating to decision making at EU level (ECtHR, *Bosphorus v. Ireland*, no. 45036/98;

## ECHR is compulsory in EU - as source of law

- The rights guaranteed by the ECHR are general principles of law - 6(2)TEU
- The Charter incorporates also ECHR – article 52 (3)

# Article 6

## TEU

- 1. The Union recognises the rights, freedoms and principles set out in the Charter [...], which shall have the same legal value as the Treaties.
- The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.
- The rights, freedoms and principles in the Charter shall be interpreted in accordance with the **general provisions** in Title VII of the Charter governing its interpretation and application and **with due regard to the explanations** referred to in the Charter, that set out the sources of those provisions.
- 2. The Union shall accede to the [ECHR]. Such accession shall not affect the Union's competences as defined in the Treaties.
- 3. Fundamental rights, as guaranteed by the [ECHR] and as they result from the **constitutional traditions common to the Member States, shall constitute general principles of the Union's law.**

# Charter and ECHR

## ECHR – minimum standard

- - A 52(3) Charter- „In so far as this Charter contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights shall be the same as those laid down by **the said Convention**”
- Case-law of the ECtHR is important, (MCB, C-400/10 PPU, pct. 53)

- Still, it shall not prevent Union law providing more extensive protection

- Rarely it is about limitations of a specific right, but more often is about balancing conflicting rights;  
Impossibility to ensure superior protection to both conflicting rights;

# Procedural context for raising human rights challenges before the CJEU

**Direct actions**– action for annulment– art. 263 TFEU – difficult access for individuals;

**Preliminary reference** - interpretation/validity– art. 267 TFEU – although the courts have the margin of appreciation, it is an easier route;

**Infringement action** – art. 258 TFEU – CJEU, 24 June 2019, C-619/18, Commission c. Poland; CJEU, 15 July 2021, [C-791/19](#)

Judgement from 15 July 2021, [C-791/19](#), Commission v. Poland, EU:C:2021-596

#### The Court

- 19(1) TEU - principle of the effective judicial protection of individuals' rights under EU -

„To ensure that bodies which may be called upon to rule on questions concerning the application or interpretation of EU law are in a position to ensure such effective judicial protection, maintaining their independence is essential, as confirmed by the second paragraph of Article 47 of the Charter, which refers to access to an 'independent' tribunal as one of the requirements linked to the fundamental right to an effective remedy." (p. 57)

- Article 47 of the Charter must be duly taken into consideration for the purpose of interpreting the second subparagraph of Article 19(1) TEU

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# CJEU and ECHR

CJEU, 22 October 2020, C-702/19, **Silver Plastics**,  
EU:C:2020:857

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- **ECHR does not constitute**, as long as the European Union has not acceded to it, a **legal instrument** which has been formally incorporated into EU law (p. 24);
- in so far as the Charter contains rights corresponding to rights guaranteed under the ECHR, **Article 52(3) of the Charter is intended to ensure the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed under the ECHR, 'without thereby adversely affecting the autonomy of Union law and ... that of the Court of Justice of the European Union'** (p. 25);
- The Court must ensure that its interpretation of the second paragraph of Article 47 and of Article 48 of the Charter ensures a level of protection which does not disregard that guaranteed by Article 6 of the ECHR, as interpreted by the ECtHR (p. 25);

CJEU, 16 July 2020, **Facebook Ireland and Schrems**, C-311/18, EU:C:2020:559

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- 98 [...] although, [...] the fundamental rights enshrined in the **ECHR constitute general principles of EU law** and although [...] the rights contained in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by that convention, the latter **does not constitute, [...], a legal instrument which has been formally incorporated into EU law.**
- 99 In those circumstances, [...] the interpretation of EU law and examination of the legality of EU legislation **must be undertaken in the light of the fundamental rights guaranteed by the Charter.**
- 100 Furthermore, [...] the validity of provisions of EU law and, in the absence of an express reference to the national law of the Member States, **their interpretation, cannot be construed in the light of national law, even national law of constitutional status, in particular fundamental rights as formulated in the national constitutions.**

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# Charter: Art. 51

## Field of application

1. 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.

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.

# „implementing EU law”

## Positive implementation

### - MS executes obligations based on EU law

the fundamental rights guaranteed by the Charter must be complied with where national legislation falls within the scope of European Union law (Åkerberg Fransson, C-617/10; XX, C-220/20 )

## Negative implementation

- where a MS 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

CJEU, 30 april 2014 , Pflieger, C-390/12

# Answer

- CHR is not applicable
- CJEU, 19 nov. 2019, C-609/17 and C-610/17, Terveys and AKT
- „54 [...] by adopting national rules [...] that grant workers rights to days of paid annual leave which exceed the minimum period of 4 weeks laid down in Article 7(1) of [...], the Member States are not implementing that directive for the purposes of Article 51(1) of the Charter”.



# Non-discrimination

- citizenship/nationality- **CJEU, 15 July 2021, CG, [C-709/20](#)** –exclusion of access to the UK social assistance by virtue of national law, which limits access to those treated as “habitually resident” in the UK

- 63 Every Union citizen may therefore rely on the prohibition of discrimination on grounds of nationality laid down in Article 18 TFEU in all situations falling within the scope *ratione materiae* of EU law. These situations include those relating to the exercise of the right to move and reside within the territory of the Member States conferred by point (a) of Article 20(2) TFEU and Article 21 TFEU (judgment of 11 November 2014, *Dano*, C-333/13, EU:C:2014:2358, paragraph 59 and the case-law cited).

# Judicial cooperation in criminal matters

CJEU, 13 January 2021, [C-414/20 PPU](#), MM

- If a EAW is not based on a '[national] arrest warrant or any other enforceable judicial decision having the same effect':
- FD 2002/584, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter, must be interpreted as **not requiring the effect of a finding by the national court, to be the release of the person placed in pre-trial detention following his or her surrender by the executing Member State to the issuing Member State.**
- the national court decide, in accordance with its national law, what consequences the absence of such a national measure, as a legal basis for the European arrest warrant at issue, may have on deciding whether or not to keep the accused person in pre-trial detention.

CJEU, 17 December 2020, L and P, [C-354/20 PPU](#) and [C-412/20 PPU](#)

- if the executing judicial authority of an EAW has evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the MS that issues that arrest warrant, it
    - cannot deny the status of 'issuing judicial authority' to the court which issued EAW and
    - cannot presume that there are substantial grounds for believing that that person will, if he or she is surrendered to that MS, run a real risk of breach of his or her fundamental right to a fair trial,
- without **carrying out a specific and precise verification** which takes account of, *inter alia*:
- his or her personal situation;
  - the nature of the offence in question and
  - the factual context in which that warrant was issued, such as statements by public authorities which are liable to interfere with how an individual case is handled.

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CJEU, 10 March 2021, PI, [C-648/20](#)

- under the Bulgarian criminal procedure system, both the EAW and the decision on which it is based had been issued by the Bulgarian public prosecutor without court review prior to surrender.
- a court must be involved prior to submission of an EAW guaranteeing adequate protection of the individual rights.
- a Bulgarian law that provides only *ex post* judicial review does not comply with the requirement set by Art. 8(1) lit. c) FD EAW and the executing judicial authority can refuse the EAW.

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# Social policy

- **CJEU, 17 March 2021, [C-585/19](#), ASE Bucharest**
- 36 [...] the right of every worker to a limitation of maximum working hours and to daily and weekly rest periods not only constitutes a rule of EU social law of particular importance, but is also expressly enshrined in Article 31(2) of the Charter [...].
- 37 The provisions of Directive 2003/88, [...] give specific form to that fundamental right and must, therefore, be interpreted in the light of the latter.

**Articles 2(1) and 3 of Directive 2003/88/EC [...] must be interpreted as meaning that, where an employee has concluded several contracts of employment with the same employer, the minimum daily rest period applies to those contracts taken as a whole and not to each of those contracts taken separately.**

# Accession

CJEU, 20 April 2021, [Repubblika v Il-Prim Ministru](#), Case C-896/19

- challenges the conformity of national constitutional provisions concerning the procedure for the appointment of members of the Maltese judiciary with, in particular, the requirements laid down by EU law for the independence of the judicial system of the Member States.
- Although Article 47 it is not applicable as such – *Repubblika* does not rely on a subjective right that it derives from EU law –, it must nonetheless be taken into consideration for the purposes of interpreting the second subparagraph of Article 19(1) TEU.

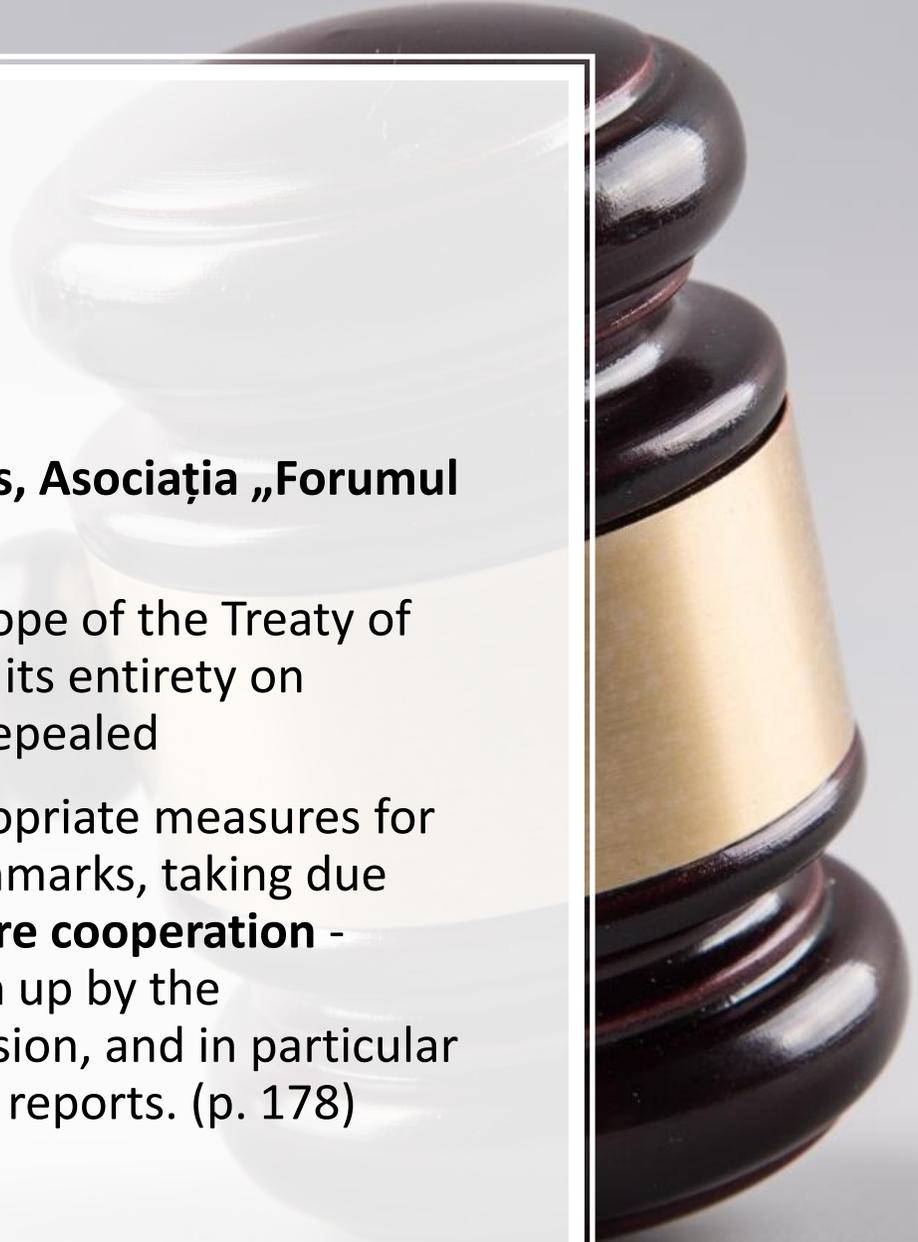
CJEU, 18 May 2021, [C-83/19](#) and others, *Asociația „Forumul Judecătorilor din România”*

- Decision 2006/928 falls within the scope of the Treaty of Accession. That decision is binding in its entirety on Romania, as long as it has not been repealed
- Romania is required to take the appropriate measures for the purposes of meeting those benchmarks, taking due account, under the **principle of sincere cooperation** - Article 4(3) TEU, of the reports drawn up by the Commission on the basis of that decision, and in particular the recommendations made in those reports. (p. 178)

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# Personal data protection

CJEU, 16 July 2020, Facebook Ireland and Schrems, [C-311/18](#)

- the appropriate safeguards, enforceable rights and effective legal remedies required by [GDPR] must ensure that data subjects whose personal data are transferred to a third country pursuant to standard data protection clauses are afforded a level of protection essentially equivalent to that guaranteed within the European Union by that regulation, read in the light of the Charter.
- the assessment of the level of protection must take into consideration both the contractual clauses agreed between the controller/processor established in the EU and the recipient of the transfer established in the third country concerned and, [...], the relevant aspects of the legal system of that third country.

CJEU, 22 June 2021, B, [C-439/19](#)

- 120 Whilst, as follows from recital 154 of the GDPR, public access to official documents constitutes a public interest capable of justifying the **disclosure of personal data contained in such documents, that access must nevertheless be reconciled with the fundamental rights to respect for private life and to the protection of personal data** [...]. In the light in particular of the sensitivity of data relating to penalty points imposed for road traffic offences and of the seriousness of the interference with the fundamental rights of data subjects to respect for private life and to the protection of personal data, which is caused by the disclosure of such data, it must be held **that those rights prevail over the public's interest in having access to official documents** [...].

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# Consumer law

- **CJEU, 13 March 2021, Airhelp, [C-28/20](#)**

- A.5 (3) Regulation 261/2004: An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- 27 The right to take collective action, including strike action, is a fundamental right laid down in Article 28 of the Charter [...], and that right is protected in accordance with EU law and national laws and practices.
- 28 [...] a strike nevertheless remains one of the ways in which collective bargaining may manifest itself and, therefore, must be regarded as an event inherent in the normal exercise of the activity of the employer concerned, [...].
  - **[....] strike action which is entered into upon a call by a trade union of the staff of an operating air carrier, in compliance with the conditions laid down by national legislation, in particular the notice period imposed by it, which is intended to assert the demands of that carrier's workers and which is followed by a category of staff essential for operating a flight does not fall within the concept of an 'extraordinary circumstance' within the meaning of that provision.**

# Concluding remarks

Article 52(3) CJEU – obligation of substance

Effective legal protection - art. 19(1) TEU - vs. right to an effective remedy and to a fair trial – art. 47 Charter

*Court rationale:*

- 1. is it a fundamental right derived from EU law?
- 2. is in stake a general interest or the protection of another right?
- 3. the limitation is provided by the law?
- 4. does the limitation respect the essence of those rights and freedom?
- 5. is the principle of proportionality respected?

National judge is the connector of the different sources of law in fundamental rights

# Thank you for your attention!

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