

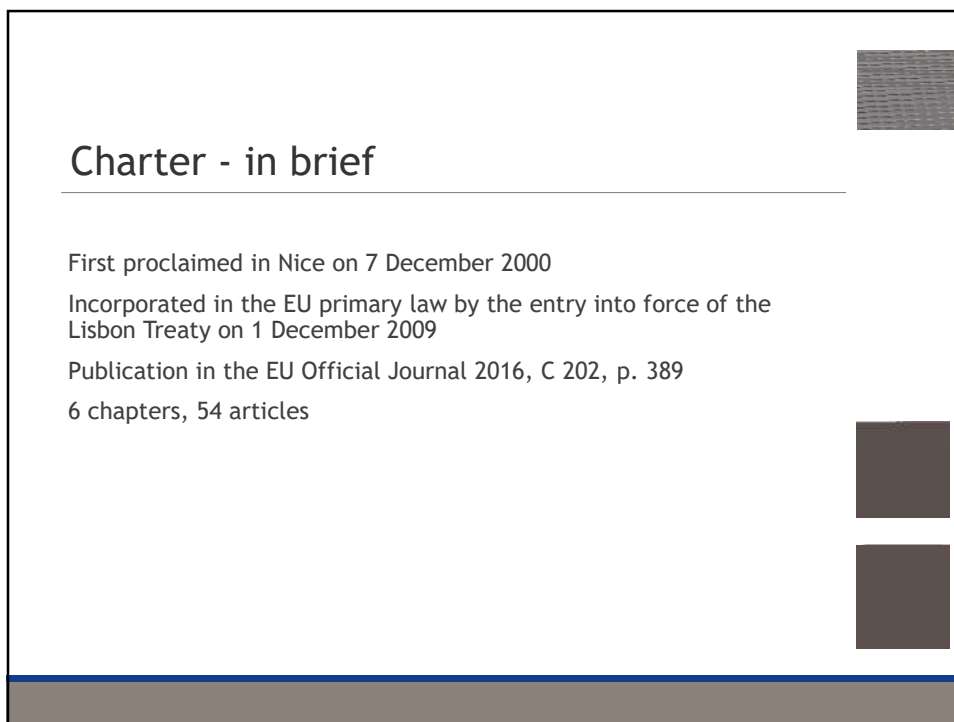
The cover features a white background with a thin horizontal line above the title. The title 'Charter of Fundamental Rights of the European Union' is in a large, bold, black sans-serif font. Below the title, there are two horizontal lines. The first line contains the text 'IEVA FREIJA - PECCATI' on the left and 'RIGA, 5 MAY 2022' on the right. The second line contains the text 'FINANCED BY THE PROGRAM OF THE EUROPEAN COMMISSION RIGHTS, EQUALITY AND CITIZENSHIP 2014-2020' on the right. On the left side of the second line, there is a small blue European Union flag icon. The right side of the cover has three dark grey rectangular blocks of varying sizes. At the bottom, there is a thick blue horizontal bar.

Charter of Fundamental Rights of the European Union

IEVA FREIJA - PECCATI RIGA, 5 MAY 2022

FINANCED BY THE PROGRAM OF THE EUROPEAN COMMISSION
RIGHTS, EQUALITY AND CITIZENSHIP 2014-2020

1



The page has a white background with a thin horizontal line above the title. The title 'Charter - in brief' is in a bold, black sans-serif font. Below the title, there are three paragraphs of text. The right side of the page has three dark grey rectangular blocks of varying sizes. At the bottom, there is a thick blue horizontal bar.

Charter - in brief

First proclaimed in Nice on 7 December 2000
Incorporated in the EU primary law by the entry into force of the
Lisbon Treaty on 1 December 2009
Publication in the EU Official Journal 2016, C 202, p. 389
6 chapters, 54 articles

2

Pre-history of the Charter

Preamble of the Charter:

“...Charter reaffirms, with due regard for the powers and tasks of the EU and for the principle of subsidiarity, the rights as they result, in particular, from:

- the constitutional traditions and international obligations common to the Member States,
- the European Convention for the Protection of Human Rights and Fundamental Freedoms
- the Social Charters adopted by the EU and by the Council of Europe,
- the case-law of the Court of Justice of the European Union and of the European Court of Human Rights.»

3

Integration of human rights in the EU law prior to the Charter

The individual's fundamental rights are included in the general principles of the Community law and the Court secures compliance thereof.

The Court follows the common constitutional traditions of the Member States, the legal provisions which are not compatible with the fundamental rights recognised by the MS constitutions are not permissible in the Community.

International treaties in the field of protection of human rights in concluding which the MS have cooperated or which they have signed may provide guidance to be taken into account in the Community law.

A range of fundamental rights are not absolute and may be restricted for the benefit of general interests, restrictions may not cause disproportional and unacceptable interference and endanger the essence of fundamental rights.

MS should implement their freedom of action in compliance with the fundamental rights.

ECJ: *Stauder* (12.11.1969.,29/69, EU:C:1969:57), *Hauer* (13.12.1979, 44/79, EU:C:1979:290)

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Charter as ‘soft law’ 2000-2009

Officially declared by the European Parliament, Council and Commission on 7 December 2000

It is not legally binding until 1 December 2009

The European Court of Human Rights referred to it already in 2002 (CHRISTINE GOODWIN v. UK)

Starting from 2006 the European Court of Justice has been referred to the Charter as an interpretation tool because:

- the EU legislator has recognised its importance and included references to the Charter in preambles of legislation,
- the Charter re-affirms the rights following from the MS constitutional traditions and common international obligations, from the Treaty on European Union and the Community Treaties, from EHRC, Social Charters adopted by the Community and Council of Europe, as well as the case law of the ECJ and the European Court of Human Rights.

ECJ: Parliament/ Council (27.06.2006., C-540/03, EU:C:2006:429, 38.p)

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Charter as the EU primary legislation

Article 6 (1) of the Treaty on European Union

“The Union recognises the rights, freedoms and principles set out in the Charter, and the Charter 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.”

Declaration No. 1 attached to Lisbon Treaty: The Charter is legally binding.

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Importance of the Charter

It secures compliance with fundamental rights in interpretation and application of the EU legislation and the MS legislation implementing the EU law.

EU secondary legislation and the MS legislation implementing the EU law may not contradict the Charter. ECJ annuls or declares invalid any EU secondary legislation contrary to the Charter.

EU may not enter into international treaties contrary to the Charter.

If MS legislation cannot be interpreted in accordance with the Charter, the MS court is obliged to discontinue application of the legislation contradicting with the Charter provisions with direct effect.

In MS litigation - procedural priority in comparison to the Convention for the Protection of Human Rights and Fundamental Freedoms

ECJ: *Banger* (12.07.2018, C-89/17, EU:C:2018:570, 48.p), *SM* (26.03.2019, C-129/18, EU:C:2019:248, 64.p.), *Facebook Ireland and Schrems* (16.07.2020., C-311/18, EU:C:2020:559), *Opinion 1/17*, (30.04.2019. EU:C:2019:341), *Cresco Investigation* (22.01.2019. C-193/17, EU:C:2019:43)

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Application and interpretation of the Charter - 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.

2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.

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.

4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

[...]

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States. (See *EU Official Journal*, 2007, L 303, p. 17)

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Field of application of the Charter - Article 51

“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 EU 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.

* Even if the Union authorities act outside the legal framework of the Union (ECJ: *Ledra Advertising et al/Commission and ECB* (20.09.2016., C-8/15 P -C-10/15 P, EU:C:2016:701)

9

Concept of implementation of the EU law

Implementation = a member state (including local governments and other public authority subjects*) comply with the obligations imposed on it by the EU law:

1) cases when EU law imposes an obligation to act upon a MS

ECJ: *Åkerberg Fransson* (26.02.2013., C-617/10, EU:C:2013:105)

2) cases when a member state refers to exemptions provided by the Treaty to justify limitations of fundamental rights (free movement of persons, goods, services capital) or implements the authority of assessment granted by the EU legislation

ECJ: *Pfleger et al* (30.04.2014., C-390/12, EU:C:2014:281), *AGET Iraklis* (21.12.2016., C-201/15, EU:C:2016:972), *Commission/Hungary* (21.05.2019., C-235/17, EU:C:2019:432), *Florescu u.c.* (13.06.2017., C-258/14, EU:C:2017:448)

3) other cases subject to review - based on the goal of the national legal regulation (to implement EU legal provision), its nature and whether the regulation has also other goals, whether this regulation can affect (also indirectly) the Union law and whether there is specific Union legal regulation in the relevant field

ECJ: *Iida* (8.11.2012., C-40/11, EU:C:2012:691)

* see: *Clarifications regarding the Charter of Fundamental Rights.*

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Questions to be asked

Is the dispute within the field of application of the EU law?

Applicability of EU law means that also the Charter is applicable to the relevant situation.

Is the link between a national provision and the EU law sufficiently close?

Adoption of national legal provisions in the field of the EU competence does not suffice

ECJ: *Julián Hernández et al* (10.07.2014., C-198/13, EU:C:2014:2055)

Is the person willing to refer to the Charter against the state (the public law subject) or another individual?

In the contrary case it should be assessed whether the relevant Charter provision has direct horizontal effect

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Direct horizontal effect of the Charter - theoretical doubts

Doesn't the direct horizontal effect cause the issue of predictability and legal security for private individuals?

Doesn't it endanger the balance between the legislator and the juridical power in favour of the latter?

What about the idea of equality of fundamental freedoms?

However

- decrease of the impact of the state under the globalisation conditions, transfer of public functions to the private sector
- large private companies or organisations may be more influential than states,
- breaches of human rights can take place in purely private fields
- distinguishing between the private/public can be of minor importance from the victim's point of view

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Direct horizontal effect taking into account Article 51(1) of the Charter

Does Article 51(1) allow it?

(...are addressed to the institutions ... of the Union... And to the Member States...)

ECJ: **YES** - Article 51(1) does not refer to whether private entities may be directly required to comply with particular legal provisions of the Charter in cases of necessity, and therefore it cannot be interpreted in a way systematically excluding this option.

The circumstance that some primary legal provisions are, first, addressed to MS, does not exclude their application in relations between private entities.

Bauer and Willmeroth (6.11.2018, C-569/16 and C-570/16, EU:C:2018:871, 86.,87.p.)

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Conditions of direct horizontal effect

The provision is imperative by its nature

The provision is sufficient per se for private individuals to have subjective rights which can be referred to in litigation, this does not have to be described in detail by the national or the Union legislation

The principles defined by the Charter does not have direct effect, they can only be introduced by the Union or MS legislation. The Charter provisions are applicable by the court only within the interpretation of such legislation and in deciding on their legality (Article 52(5) of the Charter).

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Article 21 of the Charter - 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.”

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Direct horizontal effect of non-discrimination as the general legal principle

Non-discrimination on the grounds of religion, belief, disability, age or sexual orientation can be found in various international instruments and the MS common constitutional traditions.

Therefore, non-discrimination on the grounds of age should be viewed as the general principle of the Community law.

In the result, compliance with the general principle of equal treatment, in particular, in relation to the age, may not depend on when the term granted to MS for transposition of the directive implementing the general system for fighting discrimination on the grounds of age.

Under these circumstances, the national court examining the dispute on the principle prohibiting discrimination on the grounds of age, acting within the scope of its competence, shall provide legal protection which, according to the Community law, is enjoyed by the relevant law subjects, and shall guarantee that it is provided in full extent by discontinuing application of the national legal provisions allegedly contradicting with this principle.

Mangold (22.11.2005., C-144/04, EU:C:2005:709, 74.-78.p.), *Kücükdeveci* (19.01.2010, C-555/07, EU:C:2010:21)

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Direct horizontal effect of Article 21 of the Charter- non-discrimination on the grounds of age

Association de médiation sociale (15.01.2014., C-176/12, EU:C:2014:2, 47.p.)

Non-discrimination on the grounds of age in Article 21(1) of the Charter is sufficient per se for private individuals to have subjective right applicable per se.

Dansk Industri (DI) (19.04.2016., C-441/14, EU:C:2016:278, 35.-41.p)

The national court, acting within the scope of its competence, shall provide legal protection which the person has under the Union law and shall guarantee its comprehensive application by discontinuing application of any national legal provision contradicting the principle of non-discrimination if required.

The national court may not rely on the principle of legitimate expectations to continue application of a national legal provision contradicting the general prohibition of discrimination on the grounds of age.

This would restrict applicability of the interpretation provided by the ECJ in time and would prevent a person applying to the court to benefit from this interpretation

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Direct horizontal effect of Article 21 of the Charter- non-discrimination on the grounds of religion

Egenberger (17/04.2018., C-414/16, EU:C:2018:257, 78.-81)

The imperative effect of Article 21 of the Charter is similar to various provisions of the establishing treaties prohibiting discrimination on various grounds and it applicable also to discrimination following from agreements concluded by and between private individuals

The national court shall provide legal protection of the persons under Article 21 of the Charter within the scope of its competence. If needed, application of a national legal provision contradicting Article 21 shall be discontinued even if, within the scope of a dispute between private individuals, the court may need to balance contradicting fundamental rights which the parties to the dispute have under the provisions of the TFEU or the Charter and, within the scope of the review to be performed, it may have the obligation to secure compliance with the principle of proportionality.

The obligation to establish the balance between various involved interests does not affect the possibility to refer to the relevant law in any way.

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Direct horizontal effect of Article 21 of the Charter- non-discrimination on the grounds of religion

Cresco Investigation (22.01.2019., C-193/17 EU:C:2019:43, 79., 80)

If discrimination contrary to the Union law is established and until measures are implemented for restoring equal treatment, compliance with the principle of equality may be provided by only granting the same advantages as the persons belonging to the privileged category have to the category of persons in the disadvantaged situation. Thus the persons in the disadvantaged situation should be provided the same situation as the persons having the relevant advantage.

The national court is obliged not to apply any discriminating national legal provision without asking and waiting for the legislator to annul it, and to apply the same regime to the members of the group in the disadvantaged situation as applied to the persons belonging to the other category. It has this obligation irrespective of whether the national law contains legal provisions granting the relevant competence to it.