The EU Charter of Fundamental Rights in the jurisprudence of the CJ EU

dr Adam Bodnar
Warsaw University

Trier, ERA, 17 September 2012
Charter - legal status

- since Treaty of Lisbon - legally binding

- limitations on the use of Charter
  - scope of applicability (EU + implementation of EU law by Member States) (Article 51 Section 1); no new competences (Art. 51 Section 2)
  - limitations on use of rights and freedoms (Art. 52 Section 1)
  - interpretation in accordance with the ECtHR (art. 52 Section 3) - but see also the practice of ECtHR quoting ECJ (e.g. Schalk and Kopf v. Austria)
  - interpretation in accordance with constitutional traditions of Member States (art. 52 Section 4)

- before the entry into force - use of the EU Charter as the point of reference in interpretation of the scope of fundamental rights (in numerous opinions of AG and the ECJ judgments)
Growing importance of the Charter

• 2009 - 6 references to the Charter by the CJ EU; 2010 - 27 references; 2011 - 42 references (growth by 50% in 2010/2011)

• 2009 - 2 preliminary references by national courts invoking the Charter; 2010 - 18 references; 2011 - 27 (growth by 50% in 2010/2011)

• The Charter is interpreted with respect to different rights: right to privacy and data protection, fair trial, non-discrimination principle due to different grounds, inhuman or degrading treatment, human dignity, right to family life

• added value of the Charter as a source of interpretation as compared to the European Convention on Human Rights
First case after Lisbon Treaty

• Case C-403/09 PPU, Detiček, 23.12.2009

• custody over child awarded to father by Italian court, following the divorce

• mother moved to Slovenia and settled there with the child; requested a provisional custody over child to be recognized by Slovenian court; claimed that circumstances changed

• father - wanted to enforce Italian decision

• ECJ - fundamental right of a child to have personal relationship and contacts with both parents

• compare - ECtHR - Gluhakovic v. Croatia (application 21188/09, judgment of 12 April 2011)
IP rights in online environment and fundamental rights

- Case C-70/10, Scarlet v. SABAM, 24.11.2011


- Legal action to put an injunction on internet service providers and social networks as regards distribution of copyright protected material

- ECJ - installation of filtering system to prevent violation would violate:
  - Freedom to conduct business (Article 16 of the Charter)
  - Data protection of internet users and right to impart information with the use of internet

- Importance of the case for public debate regarding ratification of the ACTA Agreement
Right to privacy and agricultural subsidies

- Joined cases C-92/09 and C-93/09, Volker und Markus Schecke, Eifert, 9.10.2010
- publication of names of persons who obtained subsidies from European Agricultural Guarantee Fund and European Agricultural Fund for Rural Development
- reliance on the Charter - first judgment where it was the principal source of interpretation
- distinction between protection of personal data of natural persons and legal persons
- principle of proportionality as interpreted by the ECJ: appropriateness and necessity
- limitations on rights and freedoms - Article 52 Section 1 of the Charter
Dublin Regulation II


- Dublin Regulation II and consequences of its application


- Obligation to respect the Charter when examining asylum applications

- Member States must be aware of situation in countries to which extradition under Dublin II Regulation is made

Non-discrimination principle and the EU Charter

- Article 21 of the Charter - non-discrimination principle
- Article 19 TFEU - legal competence to pass legislation in selected areas regarding anti-discrimination
- Case C-236/09, Test-Achats, 30.4.2011 - insurance premiums and discrimination due to sex
- C-144/04, Mangold and C-555/07, Küçükdeveci cases - non-discrimination due to age as a general principle of EU law
  - EU legislation strengthened by Article 21 of the Charter
  - however, lack of similar recognition in case C-147/08, Jürgen Römer v. City of Hamburg, 10.5.2011 (non-discrimination due to sexual orientation)
  - see also Wardyn case and rights of persons belonging to national minorities
EU Charter and Union citizenship

- EU citizenship is regulated both by the TFEU and the EU Charter
- EU Charter regulation strengthens the position of the EU citizenship
- domestic impact of certain EU citizenship cases
- Case C-34/09, Ruiz Zambrano, 8.3.2011 - right to stay for irregular migrant if his/her children are of nationality of the given state
- limitation of rule: Case C-256/11, Dereci and others, 15.11.2011.
Other new developments

• Case C-34/10, Brüstle v. Greenpeace, 18.10.2011 - patentability of human embryos created through therapeutic cloning
  ✦ reference to human dignity recognized as the general principle of EU law
  ✦ opinion of AG Bot and the ECJ - based on scientific assessment of the problem

• Case C-136/12, Google Spain (preliminary reference)
  ✦ right to be forgotten in internet and protection of privacy

• Case C-617/10, Åklagaren v Hans Åkerberg Fransson, 12.07.2012, opinion of AG Cruz Villalón
  ✦ ne bis in idem and joint responsibility for failure to pay taxes under administrative law and criminal law
Thank you for your attention

- dr Adam Bodnar
- *Warsaw University, Faculty of Law*
- *Helsinki Foundation for Human Rights*
- [a.bodnar@wpia.uw.edu.pl](mailto:a.bodnar@wpia.uw.edu.pl)
- [a.bodnar@hfhr.org.pl](mailto:a.bodnar@hfhr.org.pl)