

The Role of the Charter in the EU Legal Framework and its Relevance for National Legal Orders

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I. Introduction

The historical background and objective

- Charter of Fundamental Rights – basic source of fundamental rights
- Adopted in October 2000
- Reflected the political position of Member States, but did not have any formal legally binding effect
- Binding legal value – after entry into force of the so-called Lisbon Treaty on 1 December 2009
- The main objective – to recognize fundamental rights explicitly and make them more obvious

I. Introduction

Overview of the contents

- Contains 50 guarantees classified in accordance with 6 different value ideals

STRUCTURE:

6 thematic chapters:

- Chapter I – Dignity (Art. 1-5)
- Chapter II – Freedoms (Art. 6-19)
- Chapter III – Equality (Art. 20-26)
- Chapter IV – Solidarity (Art. 27-38)
- Chapter V – Citizens' Rights (Art. 39-46)
- Chapter VI – Justice (Art. 47-50)

General provisions for interpretation and application of the Charter

- Charter VII (Art. 51-54)

II. Legal Value

The Treaty of Lisbon and the Charter

- Founding treaties are at the top of the hierarchy of legal norms and constitute the EU primary legislation
- The Treaty of Lisbon – signed 13 December 2007 in Lisbon (amendment to the Treaty on European Union and the Treaty Establishing the European Community)
 - The Charter of Fundamental Rights signed a day earlier
- Entered into force on 1 December 2009 after having been ratified by all Member States
- The Charter has the same legal value as the founding treaties (TEU, TFEU)
 - Does not constitute an integral part of the Treaty, but Art. 6 of the TEU addresses to the Charter and at the same time restricts its application

II. Legal Value

The Treaty of Lisbon and the Charter

Fundamental rights and the EU legal order:

Article 2 of the TEU also regulates the fundamental values and objectives of the Union:

respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities, pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men.

II. Legal Value

The Treaty of Lisbon and the Charter

Article 6 of the TEU

1. *The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, 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 European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.*
3. *Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.*

II. Legal Value

The genesis of the Charter

Fundamental rights form an integral **part of the EU legal order** of special significance (Nold, 1974):

- **Human dignity** (Casagrande, 1974);
- **Principle of equality** (Klöckner-Werke AG, 1962);
- **Prohibition of discrimination** (Defrenne v Sabena, 1976);
- **Freedom of association** (Confédération syndicale, Massa, etc., 1974);
- **Freedom of religion and belief** (Prais, 1976);
- **Protection of privacy** (National Panasonic, 1980);
- **Medical secrecy** (Commission v Germany, 1992);
- **Right to property** (Hauer, 1979);
- **Freedom to choose an occupation** (Hauer, 1979);
- **Freedom of trade** (Intern. Handelsgesellschaft, 1970);
- **Freedom to conduct a business** (Usinor, 1984);
- **Freedom of competition** (France, 1985);
- **Respect for family life** (Commission v Germany, 1989);
- **Right to an effective remedy before a tribunal and to a fair trial** (Johnston, 1986; Pecastaing v Belgium, 1980);
- **Inviolability of the home** (Hoechst AG v Commission, 1989);
- **Freedom of thought and expression** (VBVB, VBBA, 1984)

II. Legal Value

The significance in the EU legal order

- The Charter, to a large extent, reflects a list of fundamental rights developed by the CJEU through its case law
 - Prior to 1 December 2009 advocates general and the CJEU referred to the Charter as a legal authority indicating that a specific right has a status of the fundamental principle
- After 1 December 2009 the Charter became an independent source of law
 - It triggered the volume and frequency of application of fundamental rights in the CJEU's case law
 - It does not represent a closed „list“ of fundamental rights of the EU legal order

II. Legal Value

The significance in the EU legal order

The role of fundamental (human) rights in the EU legal order:

- **Legitimacy and limitation of procedures of the EU bodies**
 - Stauder, Nold, Hauer, Kadi
- **Limitation of procedures of Member States when they are implementing EU law**
 - Wachauf, Bosporous
- **Authorising Member States to derogate from guaranteeing basic market freedoms**
 - Familiapress, Schmitberger, Omega

III. The Scope of Application and Legal Effect

The scope of application

Article 51 of the Charter

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.*
 - The Charter addresses to the institutions of the EU (bodies, offices and agencies)
 - The Charter addresses to all 28 Member States when they are proceeding in the framework of EU law.

III. The Scope of Application and Legal Effect

Application at the national level

The Charter as a means of protection in the domestic legal order

It produces legal effect only within the limits of the powers of the EU:

- The measure whereby the provision of EU law is implemented (it is directly based on EU law)
- The measure that allows derogation from the EU obligations (it is directly based on EU law)
- The measure indirectly affects the situation regulated under EU law (the measure adoption is within the powers of a state, but its effects restrict a right guaranteed under the EU legal order)

III. The Scope of Application and Legal Effect

Legal effect of fundamental rights of the EU

- Principle of supremacy
- Direct applicability
- Functions vertically and (in principle) horizontally

IV. Means of Legal Protection in the EU in the Event of Violation of Fundamental Rights

Possible means of protection

An individual may use the Charter:

- As a ground to review the EU measures
- As a ground to evaluate lawfulness of national measures (in the framework of application of the EU regulations)
- Direct protection – at the institutional level of the EU (seldom)
- Indirect protection – before a national court (more common)
 - Reference to the CJEU for a preliminary ruling

IV. Means of Legal Protection in the EU in the Event of Violation of Fundamental Rights

Possible means of protection

Article 53 of the Charter

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

IV. Means of Legal Protection in the EU in the Event of Violation of Fundamental Rights

The relationship between the Charter and the national Constitution

Article 145 of the Constitution of the Republic of Croatia

*The exercise of the rights ensuing from the European Union **acquis communautaire** shall be made equal to the exercise of the rights under Croatian law.*

*All the legal acts and decisions accepted by the Republic of Croatia in European Union institutions shall be applied in the Republic of Croatia **in accordance with the European Union **acquis communautaire**.***

*The Croatian courts shall protect subjective rights based on the European Union **acquis communautaire**.*

*Governmental agencies, bodies of local and regional self-government and legal persons vested with public authority **shall apply European Union law directly.***

IV. Means of legal protection in the EU in the Event of Violation of Fundamental Rights

Protection in the domestic legal order

„In accordance with the European Union *acquis communautaire*” means:

- In cases which pertain to **the issue within the powers of the EU**, the courts have an obligation:
 - To evaluate whether a national legal act or practice of governmental agencies represents infringement of a specific guarantee under the Charter
 - That is, in case of doubt, stay the proceedings and submit a reference to the CJEU for a preliminary ruling
- In the event of a „conflict” between the Charter (case law of the CJEU) and the Constitution (case law of the Constitutional Court of the Republic of Croatia):
 - Make an attempt to reconcile disputable provisions by means of interpretation
 - Where reconciliatory interpretation is not possible, apply the Charter directly or **apply the principle of supremacy and the principle of direct applicability**
 - Stay the proceedings and make a reference to the CJEU for a preliminary ruling
 - In cases within the powers of the EU, the Charter is directly applicable and the court infringes EU law where it refuses or postpones direct application of the Charter, even where it stays the proceedings in order to submit a reference to the Constitutional Court for interpretation of a relevant constitutional guarantee

IV. Means of Legal Protection in the EU in the Event of Violation of Fundamental Rights

The relationship between the Charter and the European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 52 of the Charter

- 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.*

IV. Means of Legal Protection in the EU in the Event of Violation of Fundamental Rights

The relationship between the Charter and the European Convention for the Protection of Human Rights and Fundamental Freedoms

- In the event that a national court holds that there is a „conflict” between the Charter (case law of the CJEU) and the Convention (case law of the ECtHR or of the Constitutional Court of the Republic of Croatia), it shall stay the proceedings and make a reference to the CJEU for a preliminary ruling.
- The Court shall not stay the proceedings to submit a reference to the Constitutional Court for a preliminary ruling where the court fails to make a prior reference to the CJEU for a preliminary ruling.
- The Court shall not postpone adjudication where it has received a response from the CJEU, even where the court has received a different response from the Constitutional Court or is still waiting for its response.