

SESSION II

DISCUSSION OF PARTICULAR RIGHTS

SUMMARY OF LECTURE

NB: Only cases highlighted in bold will be discussed in the lecture. Other citations are for reference only.

A. TITLE I DIGNITY (ARTS 1-5)

Art 1 CFR: *'Human dignity is inviolable. It must be respected and protected'*

Explanation to Article 1 — Human dignity (From 'Explanations Relating To The Charter Of Fundamental Rights' (2007/C 303/02))

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.' In its judgment of 9 October 2001 in Case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR I-7079, at grounds 70 — 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

1. Examples of Caselaw on dignity decided before the Charter became binding:

Case C-36/02 *Omega* [2004] ECR I-9609

Case C-303/06 *Coleman v. Attridge Law* [2008] ECR I-5603

2. Caselaw since the Charter became legally binding:

Dignity provisions in the Charter have been at issue in eg cases concerning asylum seekers, protection of victims of crime, and regulation of same sex marriage.

a) asylum law

Case C-179/11 *Cimade, Groupe d'information et de soutien des immigré's (GISTI) v Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration* [2012] ECR 000

Joined cases C-411/10 and C-493/10, *N.S. v Secretary of State for the Home Department and M.E. v Refugee Applications Commissioner*, (Judgement of 21.12.2011)

Article 18 CFR Right to asylum is also relevant:

'The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.'

Also note regulation of the EU Asylum system under the Dublin regime (Dublin II Regulation 2003/343 consisting of the Dublin II and the EURODAC Regulations) and Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers in Member States.

b) Other examples of situations where dignity likely to be at issue

- A second example is the protection of victims of crime, which spans many areas of law. For example, it covers minors (for instance, protection from sexual abuse and sexual exploitation, child pornography and solicitation of children for sexual purposes (Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.)

- A third illustration of how Charter principles on dignity may be relevant is same-sex marriage. Respect for dignity has played a significant part in arguments before international and national courts with regard to opening marriage to same-sex couples

c) It is also worth bearing in mind those cases in which the dignity provisions in the Charter were not specifically discussed by the court, although the facts of the case certainly raise issues of dignity

eg Case C-34/10, Oliver Brüstle v Greenpeace e.V. (18 October 2011)

Directive 98/44/EC on the legal protection of biotechnological inventions.

B. TITLE II FREEDOMS (ARTS 6-19)

There exist a number of different rights and considerable caselaw in this area, so this is a necessarily selective consideration of cases.

1. Caselaw on right to privacy and family life and the rights of the child

Art 7 CFR: Respect for private and family life

Definition

‘Everyone has the right to respect for his or her private and family life, home and communications’.

Legal Explanation

This right corresponds to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word ‘correspondence’ has been replaced by ‘communications’.

The meaning and scope of this right are the same as those of the corresponding Article of the ECHR.

Art 24 CFR: The rights of the child

Definition

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Legal explanations

This Article is based on the New York Convention on the Rights of the Child on 20 November 1989 by all the Member States, particularly Articles 3, 9, 12 and 13 thereof. Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters has cross-border implications, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.

Cases:

Child abduction

Case: C-400/10, J. McB. v L. E. (5 October 2010)

Brussels II bis Regulation (Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility)

Articles 7 and 24 Charter

[Case C 491/10 Aguirre Zarraga v. Pelz 22 December 2010]

2. Data protection and private databases

Art 8 CFR: Protection of personal data

Definition

- 1. Everyone has the right to the protection of personal data concerning him or her.
- 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
- 3. Compliance with these rules shall be subject to control by an independent authority.

Legal Explanations

This Article has been based on former Article 286 EC Treaty (now Art 16 TFEU) and Directive 95/46/EC on the protection of individuals with regard to the processing and free movement of personal data, as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Reference is also made to regulation N° 45/2001 of the European

Parliament and the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001).

caselaw

Joined Cases C-92/09 and C-93/09 Volker und Markus Schecke and Eifert (9 November 2010)

EU law: Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy, as amended by Council Regulation (EC) No 1437/2007 of 26 November 2007; Commission Regulation (EC) No 259/2008 of 18 March 2008 laying down detailed rules for the application of Regulation No 1290/2005 as regards the publication of information on the beneficiaries of funds deriving from the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD)

Fundamental Rights Articles 7 and 8 Charter

Reference to the ECHR Article 8 ECHR Case law

Procedure Preliminary reference from the Verwaltungsgericht Wiesbaden (Germany)

Case: C-70/10, Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM) (24 November 2011)

EU law: Directive 2000/31/EC on certain legal aspects of information society services; Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society; Directive 2004/48/EC on the enforcement of intellectual property rights; Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data; Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector.

Fundamental Rights: Articles 8, 11, 16, 17.2 Charter

Reference to the ECHR No

Procedure Preliminary reference from the cour d'appel de Bruxelles (Belgium)

[Case C-360/10 *Sabam v. Netlog*, February 16, 2012]

[See also Case C-468/10 and 469/10, *Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF) and another v. Administración del Estado* (24 November 2011)

C-543/09, *Deutsche Telecom v. Germany*

Case C-28/08 P *Commission v Bavarian Lager* (29 June 2010)]

3. Transport

Driving licence tourism and road rage

C-467/10 Baris Akyüz v. Germany 1 March [2012] ECR I-nyr

arguments by the German Government that Charter considerations –namely the right to life, the right to integrity of the person and the right to property, reaffirmed in Articles 2, 3 and 17 CFR

[Case C-27/11 *Vinkov v Nachalnik Administrativno-nakazatelna deynost*, Arts 47 and 48 of the Charter of Fundamental Rights]

Air transport:

Denise McDonagh v Ryanair Ltd [2013] EUECJ C-12/11 (31 January 2013)

Article 5 and Article 9 of the Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

Article 16 (freedom to conduct a business) and Article 17 (protection of property) of the Charter.

4. Religious persecution: Grand Chamber 5/09/12

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Explanation on Article 10 — Freedom of thought, conscience and religion

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: ‘Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.’

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Directive 2004/83/EC establish minimum standards and common criteria for all Member States regarding the recognition of asylum seekers as refugees within the meaning of Article 1 of the Refugee Convention.

Joined cases Y (C-71/11), Z (C- 99/11)

Religious persecution

C. TITLE III EQUALITY (ARTS 20-26)

Art 21. Non-discrimination

Definition

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 Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Legal Explanations

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article 19 TFEU, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

Art 23. Equality between men and women

Definition

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Legal Explanations

The first paragraph has been based on Articles 2 and 3(2) EC Treaty, and on Article 141(1) EC Treaty, now replaced by Article 157 (1) TFEU. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article 141(3) of the EC Treaty, now replaced by Article 157(3) TFEU, and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Caselaw:

Equality

C-236/09, *Association belge des Consommateurs Test- Achats ASBL and Others v Conseil des ministres* (1 March 2011)

EU law: Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

Fundamental Rights Articles 21 and 23 Charter

Procedure Preliminary reference from the Belgian Constitutional Court

[*Case C-232/09, Dita Danosa v LKB Līzings SIA* (11 November 2010)]

EU law: Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)

Fundamental Right: Article 23 Charter

Procedure Preliminary reference from the Augstakas Tiesas Senats (Latvia)]

Sexual orientation

Case C-147/08 *Jürgen Römer v Freie und Hansestadt Hamburg. Judgment of the Court (Grand Chamber) of 10 May 2011*

EU law Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation Article 141 EC (now Article 157 TFEU)

Fundamental Rights Non discrimination on grounds of sexual orientation (Charter not mentioned)

Procedure Preliminary reference from the Arbeitsgericht Hamburg (Germany)

[Age

C-555/07 Seda Küçükdeveci v. Swedex GMBH & Co. KG (19 January 2010)

EU law: Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation

Fundamental Rights: Article 21 Charter

Procedure: Preliminary reference from the Landesarbeitsgericht Düsseldorf (Germany)]

[*Case C-45/09, Gisela Rosenblatt v. Oellerking Gebäudereinigungsges. mbH* (12 October 2010)

EU law: Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation

Fundamental Rights: Principle of non-discrimination on grounds of age (Charter not mentioned)

Reference to the ECHR: No

Procedure: Preliminary reference from the Arbeitsgericht Hamburg]

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