

CASE-STUDIES:

MEMBER STATE ACTION

&

SCOPE OF APPLICATION

OF THE EU CHARTER



Case-studies: 4 national disputes where EU CFR was relied upon by claimant and where a Ref for a PR was made by NCt

- ① national challenge aimed at national measure *enforcing EU legislation* (i.e. Reg. 1924/2006) on basis of the EU Charter (Art. 15 and 16 CFR)
- ② national challenge aimed at national procedural rules on the basis of EU Charter (Art. 47 CFR)
- ③ national challenge directed at national measure *adopted on basis of EU legislation* (i.e. Reg. 343/2003) on the ground that it is not compatible with Art. 4 CFR
- ④ national challenge directed at national procedural rules in the *context of a dispute about good implementation of EU law* by MS on the ground that they are not compatible with Art. 47 CFR



CASE OF GERMAN WINE LTD V. DPT RESPONSIBLE FOR MARKETING OF ALCOHOLIC BEVERAGES

- **Key legal issue:** Is Regulation No 1924/2006, which absolutely prohibits a producer or distributor of wine from claiming that their wine is “easily digestible”, even if that claim is inherently correct, compatible with Articles 15(1) and 16 of the Charter?
- **Scenario = claimant is challenging national measure which enforces EU legislation (Reg. 1924/2006) on the basis of the EU CFR (Arts 15(1) and 16) and reference for a PR is made**
- **Source:** Case C-544/10 [2012]



Q referred

- Is it compatible with the first subparagraph of Article 6(1) of the Treaty on European Union, as amended on 13 December 2007 (OJ 2008 C 115, p. [1]), read in conjunction with Article 15(1) (freedom to choose an occupation) and Article 16 (freedom to conduct a business) of the [Charter], as amended on 12 December 2007 (OJ 2007 C 303, p. 1), for a producer or marketer of wine to be prohibited, without exception, from making in its advertising a health claim of the kind at issue [in the main proceedings], even if that claim is correct?’



Court's findings

- General reminder: Charter has the same legal value as the EU Treaties
- Relevant Charter provisions: While Articles 15 & 16 CFR are relevant to interpret the legislative prohibition concerned, also important to take into account Art. 35(2) CFR (EU law must ensure a high level of human health protection)
- 1st key conclusion: legislation at issue is designed to protect health, an objective recognised by Article 35 CFR
- 2nd key conclusion: freedoms to choose an occupation and conduct a business are not absolute freedoms
- Outcome: Marketing restriction at issue **is compatible with the CFR**



CASE OF JOE DRUNK V. 'TRAFFIC POLICE' DEPARTMENT

- **Key legal problem:** Does EU law (including Article 47 CFR) preclude national legislation which does not recognise a right of appeal against decisions imposing penalties for what are described as 'minor' breaches of the road traffic regulations?
- **Scenario:** National dispute relating to application of national legislation where **COMPATIBILITY OF NATIONAL PROCEDURAL RULES LAW** with EU CFR is questioned and reference for a PR is made
- **Source:** Case C-27/11 *Anton Vinkov* [2012]



Court's findings

General Principles:

- i. requirements flowing from the protection of FRts are binding on MS whenever they implement EU law;
- ii. provisions of the Charter are addressed to the MS only when they are implementing EU law;
- iii. where national legislation falls within the scope of EU law, the ECJ must provide all the criteria of interpretation needed in order for the NCT to determine whether that legislation is compatible with the FRts which derive in particular from the Charter

Present case:

- “it is **not** apparent from the order for reference that the national legislation constitutes a measure implementing EU law or that it is connected in any other way with EU law. Accordingly, the jurisdiction of the Court to rule on the reference for a preliminary ruling in so far as it relates to the fundamental right to an effective remedy is not established” (para. 59)



CASE OF JOHN DOE V. SECRETARY OF STATE FOR THE HOME DEPARTMENT

- **Key legal issue:** Does Article 4 CFR preclude MS, including the national courts, from transferring an asylum seeker to the MS indicated as responsible under EU law (i.e. Reg. No 343/2003) where they cannot be unaware that systemic deficiencies in the asylum procedure amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 CFR?
- **Scenario:** Challenge directed at NATIONAL MEASURE ADOPTED ON BASIS OF EU REGULATION on the ground that it is not compatible with Charter and where national government argued that the national measure does not fall within scope of EU law following reference for a PR
- **Source:** Case C-411/10 *N. S. v Secretary of State for the Home Department*



National Court's Relevant Question:

- Does a decision made by a Member State under Article 3(2) of ... Regulation No 343/2003 whether to examine a claim for asylum which is not its responsibility under the criteria set out in Chapter III of the Regulation **fall within the scope of EU law for the purposes of Article 6 [TEU] and/or Article 51 of the Charter ...?**



Court's findings:

General principle:

- According to Art. 51(1) CFR, the Charter only binds MS when they are implementing EU law

Nature of power granted to MS:

- Scrutiny of Article 3(2) of Reg. 343/2003 shows that it grants MS a discretionary power
- The discretionary power conferred on the MS forms part of the mechanisms for determining the individual MS responsible for an asylum application provided for under that regulation and, therefore, merely an element of the Common European Asylum System

- Answer:

A MS which exercises that discretionary power must be considered as implementing EU law within the meaning of Article 51(1) CFR.



CASE OF POOR FIRM LTD V. STINGYLAND

- **Key legal issue:** Is a national mechanism for legal aid, intended inter alia to exempt persons from payment of the administrative charge for proceedings, the grant of which is subject to more restrictive conditions in respect of legal persons than natural persons, consistent with EU law and in particular, Article 47 of the Charter?
- **Scenario:** National dispute about breach of EU law by MS where COMPATIBILITY OF NATIONAL PROCEDURAL RULES LAW with EU CFR is questioned and reference for a PR is made
- **Source:** Case C-279/09 "*DEB*" [22 Dec. 2010]



The Q referred to the ECJ by the NCt

- ‘In view of the fact that Member States may not, through the structuring of conditions under national law governing the award of damages and of the procedure for pursuing a claim seeking to establish State liability under [EU] law, make the award of compensation in accordance with the principles of State liability in practice impossible or excessively difficult, must there be reservations with regard to a national rule under which the pursuit of a claim before the courts is subject to the making of an advance payment in respect of costs, and a legal person, which is unable to make that advance payment, does not qualify for legal aid?’

[NB. No reference is made to Charter]



Court's findings

SETTLED CASE LAW:

- national procedural rules governing actions for safeguarding an individual's rights **under EU law** must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law

RELEVANT EU RIGHT:

- The Q referred thus concerns the right of a legal person to effective access to justice = in EU law, the **principle of effective judicial protection** (a GP of EU Law + Charter right)

GENERAL FINDING:

- Charter does **not** exclude grant of legal aid to legal persons

Held:

- (i) Legal persons may rely on Art. 47 CFR;
- (ii) legal aid granted pursuant to that principle may cover, inter alia, dispensation from advance payment of the costs of proceedings and/or the assistance of a lawyer;
- (iii) for NCTs to ascertain whether the conditions for granting legal aid breach Art. 47 CFR (must review legitimacy of aim pursued and proportionate nature of national rules)