

# The Scope of Application of Fundamental Rights

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# EEC Treaty 1957:

- Economic integration only;
- No mention on human rights until ECJ judgment in 1969;
- Case 29-69 Stauder: "Fundamental rights are enshrined in the general principles of Community law and protected by the Court."
- Case 11-70 Handels case: "...respect for fundamental rights formed an integral part of the general principles of Community law protected by the ECJ"
- Case C149-77 Defrenne 3: "...there can be no doubt that the elimination of discrimination based on the sex forms part of those fundamental rights."



# EEC Treaty 1957

## (continued)

- Case 4-73 Nold: "the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot therefore uphold measures which are incompatible with fundamental rights recognised and protected by the Constitutions of those States."
- Case C60/00 Carpenter case: “..the Community legislature has recognised the importance of ensuring the protection for family life of nationals of the Member States in order to eliminate obstacles to the exercise of the fundamental freedoms guaranteed by the Treaty, as is particularly apparent from the provisions of the Council regulations and directives on the freedom movement of employed and self-employed workers within the Community.



## **Three sources of Fundamental Rights in the EU Legal Order**

1. General Principles of Law: originally developed under Art. 220 EC (ex Art. 164 EEC Treaty), codified since the Treaty of Maastricht as Article 6(2), EU Art. 6(2) and now Art. 6(3) EU.
  - Art. 6(3) EU: 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.



## **Three sources of Fundamental Rights in the EU Legal Order**

2. EU Charter of Fundamental Rights: partial codification of the EU law, now binding under Art. 6(1) EU.
  - Art. 6(1) EU: The Union recognises 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.



## **Three sources of Fundamental Rights in the EU Legal Order**

3. Legislation: e.g. – Directive 95/46/EC (processing of personal data); Directive 2000/43/EC (Racial Equality Directive); Directive 2000/78/EC (Framework Directive on Employment); 2006/54/EC (Recast Gender Equality Directive: equal treatment of men and women in matters of employment and occupation).
- The Preamble recite Art. 6 of EU (now Art. 2 EU) and other international treaties such as Universal Declaration of HR, CEDAW, CERD, ICCPR, ICESCR and ECHR.



	<b>General principles of EU law</b>	<b>Charter of Fundamental Rights</b>	<b>EU legislation</b>
<b>Content</b>	Developed by the ECJ seeking inspiration from international human rights and common constitutional traditions	Listed in the Charter, including Explanations relating to the Charter (Art. 52(7))	Stipulated in legislative instruments
<b>Scope of application</b>	In the field of application of EU law: they have an autonomous function to fill	In the field of application of EU law: they have an autonomous function to fill (Art. 51(1) &(2))	Apply to the situations they address, thus extending the scope of application of EU law, following the exercise by the EU of its competences





## **General principles of law or the Charter apply only in the field of application of EU law**


- 1. To the institutions, organs, bodies or agencies of the Union (Case C-404/92 X v Commission, Case C-185/95, Baustahlgewehbe (17 Dec. 1998);**
- 2. To the Member States: (a) when they implement EU law....and (b) when they use an exception provided for by the Treaties or by the case law: They are bound to respect fundamental rights as part of the general principles of EU law (see Case 36/75 Rutili; Case C-368/95 Familiapress);**
- 3. (c) in addition, where the Member States wish to justify a restriction imposed to a fundamental freedom of movement under EC law or to the rules on competition, they may invoke the need to protect fundamental rights (see media & broadcasting cases: Case 353/89 Commission v Netherlands; Case 288/89 Stichting Collectieve Antennevoorziening Gouda et al. v Commissariaat voor de Media; Case 148/91 Vereniging Veronica Omroep Organisatie v. Commissariaat voor de Media; Case C-36/02 Omega Spielhallen; Case C-112/00 Eugen Schmidberger v Internationale Transporte und Planzuge; Case C-339/10 Estov; Case C-256/11 Dereci;)**





## **Member States must take into account fundamental rights when they implement EU law**

- Case 101/01 Lindqvist: it is not the responsibility of the EU legislator to ensure that all possibilities to implement EU law in violation of fundamental rights are foreclosed (see Case C-540/03 Parliament v Council [action for the annulment of certain provisions of the Family Reunification Directive 2003/86/EC])
- Case C-368/95 Familiapress: Maintenance of press diversity may constitute an overriding requirement justifying a restriction on free movement of goods. Such diversity helps to safeguard freedom of expression as protected by Article 10 of the ECHR, which is one of the fundamental rights guaranteed by the Community Legal Order (para. 18).



## Case C-368/95 Familiapress

- However, the Court has also consistently held.... That the provisions of national law in question must be proportionate to the objective pursued and that objectives must not be capable of being achieved by measures which are less restrictive of intra-Community trade..... (para. 19)
- Furthermore, it is to be noted that where a member States relies on overriding requirements to justify rules which are likely to obstruct the exercise of free movement of goods, such justification must also be interpreted in the light of the general principles of law and in particular of fundamental rights. (para. 24)



## C-540/03 Parliament v Council

- Parliament contests that the proposed Directive does not respect fundamental rights, in particular family life and non-discrimination as guaranteed by ECHR and Art. 6(2) EU;
- The main issue is that the Directive imposed conditions for integration for the entry of an independent minor at age 12 and imposed the eligibility of family reunification before the minor before the age of 15;
- ECJ ruled that the Directive reserved the margin of appreciation of the Member States to implement the Directive and therefore no breach of fundamental rights; and
- It shows differential treatment between EU citizens and third country nationals.



**Member States wish to justify a restriction imposed to a fundamental freedom of movement under EC law or to the rule on competition**

- Case C-256/11 Dereci
- Case C-279/09 DEB
- Case C-617/10 Akerberg Fransson (pending)



## Dereci case decision

- “...the Union citizen has, in fact, to leave not only the territory of the MS of which he is a national but also the territory of the Union as a whole.” (para. 66)
- “....a right of residence may not, exceptionally, be refused to a third country national, who is a family member of a Member State national, as the effectiveness of Union citizenship enjoyed by that national would otherwise be undermined.” (para. 67)
- “...the mere fact that it might appear desirable to a national of a MS, for economic reasons or in order to keep his family together in the territory of the Union, for the members of his family who do not have nationality of a MS to be able to reside with him in the territory of the Union, is not sufficient in itself to support the view that the Union citizen will be forced to leave Union territory if such a right is not granted.” (para. 68)



## DEC case decision

- “The principle of effective judicial protection, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it is not impossible for legal persons to rely on that principle and that 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.  
In that connection, it is for the national court to ascertain whether the conditions for granting legal aid constitute a limitation on the right of access to the courts which undermines the very core of that right; whether they pursue a legitimate aim; and whether there is a reasonable relationship of proportionality between the means employed and the legitimate aim which it is sought to achieve.....  
With regard more specifically to legal persons, the national court may take account of their situation. The court may therefore take into consideration, inter alia, the form of the legal person in question and whether it is profit-making or non-profit making; the financial capacity of the partners or shareholders; and the ability of those partners or shareholders to obtain the sums necessary to institute legal proceedings.” (para. 63)





## Implication of DEC case

- Art. 47: Right to effective remedy and to a fair trial;
- It extends criminal legal aid from ECHR requirement to civil legal aid by the EUCJ;
- Legal personality is eligible for civil legal aid, including NGOs (last paragraph of the judgment);
- It will assist NGOs that pursue judicial review under EU law (no requirement for victim on standing)



**Note: EU legislation which seeks to implement fundamental rights may be given a broad interpretation in order to take purpose into account**

- Opinion of AG Tizzano of Feb. 2001 in Case C-173/99, Broadcasting, Entertainment, Cinematographic and Theatre Union (BECTU) v the Secretary of State for Trade and Industry;
- Join Cases 75/82 and 117/82, Razzouk and Beydoun v Commission [1984] ECR 1509;
- Case C-144/04 Mangold v Helm [2005] ECR I-9981



**(a) Obligation to implement EU law in accordance with fundamental rights (as developed by ECJ or as defined by the EU Charter)**

**Contributes to the uniformity application of EU law**

**(b) Obligation to rely on exceptions allowed by EU law only in accordance with fundamental rights**

**Contributes to the uniformity application of EU law**

**(c) Obligation to restrict fundamental economic freedoms stipulated under EU law where this would violate fundamental rights**

**Contributes to the fragmentation of the application of EU law**



## **ECJ will not intervene where fundamental rights are violated by the Member States outside the scope of application of EU law**

### **1. Case C-299/95, Kremzow, judgment of 29 May 1997**

- Mr Kremzow argues that the Court has jurisdiction to answer the questions referred for a preliminary ruling, inter alia, because he is a citizen of the European Union and, as such, enjoys the right to freedom of movement for persons ... Since any citizen is entitled to move freely in the territory of the Member States without any specific intention to reside, a State which infringes that fundamental right guaranteed by Community law by executing an unlawful penalty of imprisonment must be held liable in damages by virtue of Community law. (para. 13)
- “ ... fundamental rights form an integral part of the general principles of Community law whose observance the Court ensures. ...” (para. 14)
- Furthermore, according to the Court's case-law (see, in particular, Case C-159/90 Society for the Protection of Unborn Children Ireland [1991] ECR I-4685, paragraph 31), where national legislation falls within the field of application of Community law the Court, in a reference for a preliminary ruling, must give the national court all the guidance as to interpretation necessary to enable it to assess the compatibility of that legislation with the fundamental rights ... whose observance the Court ensures. However, the Court has no such jurisdiction with regard to national legislation lying outside the scope of Community law. (para. 15)



### Case C-299/95 Kremzow (continued)

- ‘The appellant in the main proceedings is an Austrian national whose situation is not connected in any way with any of the situations contemplated by the Treaty provisions on freedom of movement for persons. Whilst any deprivation of liberty may impede the person concerned from exercising his right to free movement, the Court has held that a purely hypothetical prospect of exercising that right does not establish a sufficient connection with Community law to justify the application of Community provisions...’ (para. 16)
- ‘Moreover, Mr Kremzow was sentenced for murder and for illegal possession of a firearm under provisions of national law which were not designed to secure compliance with rules of Community law...’ (para. 17)
- ‘It follows that the national legislation applicable in the main proceedings relates to a situation which does not fall within the field of application of Community law.’ (para. 18)
- Where national legislation is concerned with a situation which, as in the case at issue in the main proceedings, does not fall within the field of application of Community law, the Court cannot, in a reference for a preliminary ruling, give the interpretative guidance necessary for the national court to determine whether that national legislation is in conformity with the fundamental rights whose observance the Court ensures, such as those deriving in particular from the Convention.’ (para. 19)





## **2. Case C-328/04 Criminal proceedings v Attila Vajnai**


- Question referred for preliminary ruling: ‘Is Article 269/B, first paragraph, of the Hungarian Criminal Code, which provides that a person who uses or displays in public the symbol consisting of a five-point red star commits – where the conduct does not amount to a more serious criminal offence – a minor offence, compatible with the fundamental Community law principle of non-discrimination? Do Article 6 of the Treaty on European Union, according to which the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, Directive 2000/43/EC, which also refers to fundamental freedoms, or Articles 10, 11 and 12 of the Charter of Fundamental Rights allow a person who wishes to express his political convictions by means of a symbol representing them to do so in any Member State?’
- Para 12: According to settled case-law, where national provisions fall within the field of application of Community law the Court, on a reference for a preliminary ruling, must give the national court all the guidance as to interpretation necessary to enable it to assess the compatibility of those provisions with the fundamental rights whose observance the Court ensures (Case C-299/95 Kremzow [1997] ECR I-2629, paragraph 15).





## **2. Case C-328/04 Criminal proceedings v Attila Vajnai (continued)**

- Para. 13: By contrast, the Court has no such jurisdiction with regard to national provisions outside the scope of Community law and when the subject-matter of the dispute is not connected in any way with any of the situations contemplated by the treaties ...
- Para. 14: It is clear that Mr Vajnai's situation is not connected in any way with any of the situations contemplated by the provisions of the treaties and the Hungarian provisions applied in the main proceedings are outside the scope of Community law.
- Para. 15: In those circumstances, it must be held, on the basis of Article 92(1) of the Rules of Procedure, that the Court clearly has no jurisdiction to answer the question referred by the Fővárosi Bíróság



### 3. Case C-339/10 Estov

- The case related to the domestic planning law in which the applicant challenge the decision relied on the declaration concerning the Charter of Fundamental Rights of the European Union, annexed to the final act of the Lisbon Treaty and the Supreme Admin. Court of Bulgaria requested for a preliminary ruling on the interpretation of the Charter;
- “...Art. 51(1) of the Charter, its provision are addressed ‘to the Member States only when they are implementing Union law’ and that, under Art. 6(1) TEU, which gives the Charter binding force, and as is apparent from the declaration on the Charter of Fundamental Rights of the European Union annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the Charter does not establish any new power for the Union or modify its powers.” (para. 12)
- “Moreover, it is settled case-law that the requirements following from the protection of fundamental rights are binding on MS whenever they implement European Union law, and they are bound, to the fullest extent possible, to apply the law in accordance with these requirements.” (para. 13)