



Freedom, Security and Justice within the European Union

- with special emphasis on criminal justice issues

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MODULE 1

What is the Area of Freedom, Security and Justice?

1

Reading Lecture 5

Area of Justice and Fundamental Rights

1. In this lecture you will learn about...

- components of the Area of Justice,
- how the European Union protects fundamental rights and how the protection affects the Area of Justice,
- basic concept of access to justice and
- the European Union Agency for Fundamental Rights (FRA).

Learning time – approximately 3 hours



2. Setting the scene

Read the text!

Article 2 TEU states that “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

In reading lecture 1, you met this norm already.

This is a key provisions on European values that also mirrors the fundamental premise (of the EU) that each MS shares with all the other MS and recognizes that they share with it, this set of common values. These values are the ‘untouchable core’ of the EU legal order¹ and were followed from the very beginning of the integration process, assuming that it was only open to democratic European states adhering to the rule of law and human rights

Remember – Spain and Portugal were prevented from joining the European Economic Community because of their authoritarian regimes until 1985 (Portugal) and (1986 (Spain).

protection. The values found more detailed expression in the articulation in 1993 of what is known as the Copenhagen criteria for accession. The criteria aimed at the ‘export’ of the hitherto unwritten principles now at the core of Article 2 TEU to the candidate countries of Central and Eastern Europe.² Otherwise this article can be taken as the expression of ‘EU identity’ defining the Union as a legal-political system but without having clear connections or links to legislation or application of law. However, these links are sufficiently created by the Charter of Fundamental Rights of the European Union as it stated in Article 51 CFR: “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.” [See further explanations under 3.] The human rights guaranteed by the Charter must be considered by all EU bodies and can be enforced by CJEU within the limits set. Also, MS are obliged to comply with the CFR but individuals could have struggles to refer any provisions of the CFR [see under 3.].

¹ Nikos Lavranos (2009)

² Nikos Lavranos (2009)



Justice issues are expressly integrated into the shared policy of the Area of Freedom, Security and Justice. Within the Area of Freedom, Security and Justice, the subarea of justice is described in Article 67 subsection 4: “The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in

civil matters.” This rule includes the specific legal competence to be exercised by the EU and specific and detailed measures can be taken to establish full access to justice for everyone within the EU. Furthermore, the Area of Justice – in this concept – does not contain entitlements for harmonizing criminal laws or criminal justice of the MS, because any types of crime control (prevention, law enforcement, investigation, criminal procedure, cooperation between competent authorities) belongs to the Area of Security. But the contours of this differentiation become blurred especially if we place the concept of ‘access to justice’ in a broader context namely in the context of the right to fair trial. Nevertheless the Area of Justice (hence the entitlements of the EU to legislate in this field) has a strong cross-border character, while on the other hand, human rights protection as laid down in the Charter fails to address this dimension (it is indifferent!).

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3. Charter of Fundamental Rights of the European Union

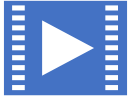


The Charter is a great achievement. With the Charter, we agreed on a set of shared values and fundamental rights that serve as a compass to guide our actions.

Vera Jourová, Vice-President for Values and Transparency, European Commission 2019

The EU Charter of Fundamental Rights provides persons living in the EU with specific rights. The Charter is the EU’s bill of rights. It binds EU institutions in all contexts. Member States are bound to respect the Charter only when they are “implementing Union law” (Article 51 of the Charter).

However, since EU legislation directly or indirectly influences much law- and policymaking at national and local levels, the Charter is a relevant tool for national judges, lawmakers and administrators in a wide array of contexts. The Charter entered into force on 1 December 2009. It has revamped the fundamental rights culture within the EU institutions and increased the human rights momentum across the EU.



Watch the video!

<https://www.youtube.com/watch?v=Fceik3nGkxM&list=PLZMjtrRo5niNz3wU16hlOjsNVlhyZsabk&index=1>

The Charter is a new, strong human rights instrument. Part of EU primary law, it has “the same legal value as the [EU] Treaties”. It enjoys wide and solid legitimacy, as it was drafted by a multipartite European Convention composed of 62 members, about two thirds of whom were members of the European and national parliaments. The approach was more open and transparent than the classical model of treaty change through intergovernmental conferences. The Charter “constitutes the expression, at the highest level, of a democratically established political consensus of what must today be considered as the catalogue of [the EU] fundamental rights guarantees”. It contributes to the overall promotion of human rights for at least four reasons:

1. it is **supranational** – see Article 51 referred already under 1.
2. it increases the **visibility** of fundamental rights within the EU – a written catalogue of fundamental rights
3. its wording is **modern** and more comprehensive than national and international law – reflection of new developments of European society
4. it is **EU-specific** – also contains rights which are definitely not included in national or other international instruments (e.g. Article 42 right to access EU documents or Article 45 right to freedom of movement and residence)³

In contrast, Member States use the Charter far less. Although it has been in force for a decade, over half of the respondents in a Eurobarometer survey had never heard of the Charter, let alone its relevance. In 2019, a large majority of the population (72 %) did not feel well informed about the Charter. Six in 10 (60 %) wanted more information about its contents. More worryingly, exchanges with practitioners and consultations carried out for this chapter reveal that the Charter’s added value appears to remain unclear to many legal professionals. These include lawyers, judges, and representatives of national human rights institutions (NHRIs) and civil society organisations (CSOs) specialised in human rights.

The CFR does not create new fundamental rights or does not extend the scope of the already achieved protection by the Union law, it mirrors rather the state of art in this regard, but indeed its obligatory character opened new horizon for enforcing fundamental rights within the EU law – according to its original function correctly. As the fifth preamble section underlines: “This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity,

the rights as they result, in particular, from the constitutional traditions and international

³ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-fundamental-rights-report-2020_en.pdf



obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.”



4. European Union Agency for Fundamental Rights

The EU Agency for Fundamental Rights (FRA) provides independent, evidence-based advice to EU and national decision makers, thereby helping to make debates, policies, and legislation on fundamental rights better informed and targeted. It advises EU institutions and national governments on fundamental rights, particularly in the areas of: discrimination, access to justice, racism & xenophobia, data protection, victims' rights and children's rights. The Agency aims to help promote and protect fundamental rights more effectively across the EU. FRA maintains ongoing cooperation with EU institutions and governments, providing them with independent expert advice and fundamental rights analysis. It has set up networks and established links with partners at all levels, so that its advice and research can reach decision makers in national governments and the EU.⁴

The FRA was created already in 2007 when the European Convention accepted the first version of the Charter.

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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 168/2007

of 15 February 2007

establishing a European Union Agency for Fundamental Rights

Check the website of the FRA: <https://fra.europa.eu/en>

⁴ https://europa.eu/european-union/about-eu/agencies/fra_en



5. European Convention of Human Rights

The European Convention on Human Rights (ECHR) is an international human rights treaty between the 47 states that are members of the Council of Europe (CoE) - **not to be confused with the European Union.**

The Convention was opened for signature in Rome on 4 November 1950 and came into force in 1953. It was the first instrument to give effect to certain of the rights stated in the Universal Declaration of Human Rights and make them binding. Since its adoption in 1950 the Convention has been amended a number of times and supplemented with many rights in addition to those set forth in the original text.⁵

The idea for the creation of the ECHR was proposed in the early 1940s while the Second World War was still raging across Europe. It was developed to ensure that governments would never again be allowed to dehumanise and abuse people's rights with impunity, and to help fulfil the promise of 'never again'.

In the centre of our movement stands the idea of a Charter of Human Rights, guarded by freedom, and sustained by law.

Winston Churchill, The Hague, 7th May 1948

In May 1948 after the war had ended, the 'Congress of Europe' was held in The Hague, a gathering of over 750 delegates which included leaders from civil society groups, academia, business and religious groups, trade unions, and leading politicians from across Europe such as Winston Churchill, François Mitterand and Konrad Adenauer.

The creation of the ECHR led to the establishment of the European Court of Human Rights (ECtHR). It was set up in 1959 and is based in Strasbourg, France. The Court exists to safeguard the ECHR, providing a forum for people who believe their rights have been denied, allowing them to have their cases heard. Judgements of the Court legally bind countries to stand by its rulings. The resulting case-law makes the Convention a powerful 'living instrument', whose decisions have influenced the laws and practices of governments across Europe.⁶

⁵ <https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=>

⁶ <https://www.amnesty.org.uk/what-is-the-european-convention-on-human-rights>

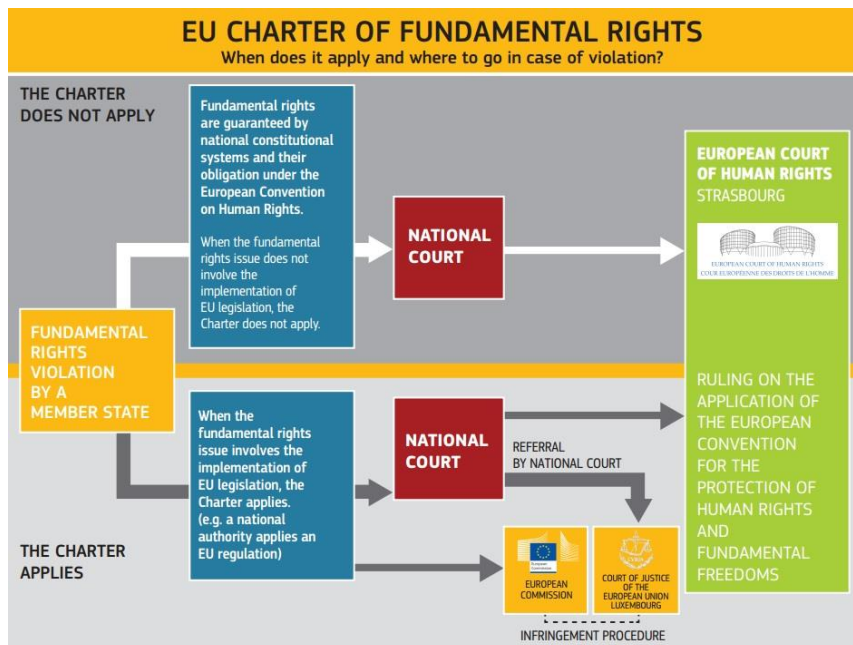


6. Comparison – ECHR and CFR – Fill the sheet.



	ECHR	CFR
<i>Organisation</i>		European Union
<i>Came into force</i>	1953	
<i>Obliging</i>		EU institutions
<i>Scope generally</i>	every aspects of social life	member states of the EU (27 ⁷) when they implement EU law
<i>Scope in comparison with ECHR</i>		
<i>Individual complaint</i>		no
<i>Applies</i>	indirectly by the legislative, the executive and judiciary of any States	indirectly by the national legislative and judiciary
<i>directly by whom?</i>	directly by	directly by

7



⁷ Poland has opted out. Check it in Module 1 Videolecture 1.



7. Access to justice within the AFSJ⁸

According to international and European human rights law, the notion of access to justice obliges states to guarantee each individual's right to go to court – or, in some circumstances, an alternative dispute resolution body – to obtain a remedy if it is found that the individual's rights have been violated. It is thus also an enabling right that helps individuals enforce other rights.

Access to justice encompasses a number of core human rights, such as the right to a fair trial under Article 6 of the ECHR and Article 47 of the EU Charter of Fundamental Rights, and the right to an effective remedy under Article 13 of the ECHR and Article 47 of the Charter.

Access to justice rights in the EU Charter of Fundamental Rights may **correspond** to those contained in the ECHR. ECtHR case law is therefore important for interpreting Charter rights. Although different systems govern enforcement of the ECHR and the EU Charter of Fundamental Rights, both emphasise that the rights to an effective remedy and to a fair trial should primarily be enforced at national level.

Access to justice enables individuals to **protect themselves against infringements** of their rights, to remedy civil wrongs, to hold executive power accountable and to defend themselves in criminal proceedings. It is an important element of the rule of law¹ and cuts across civil, criminal and administrative law.

Access to justice is both a process and a goal and is crucial for individuals seeking to benefit from other procedural and substantive rights.

At the EU policy level, access to justice in EU Member States – particularly the efficiency and quality of justice systems, and the independence of the judiciary within the EU – is regularly assessed through the so-called EU Justice Scoreboard.⁹

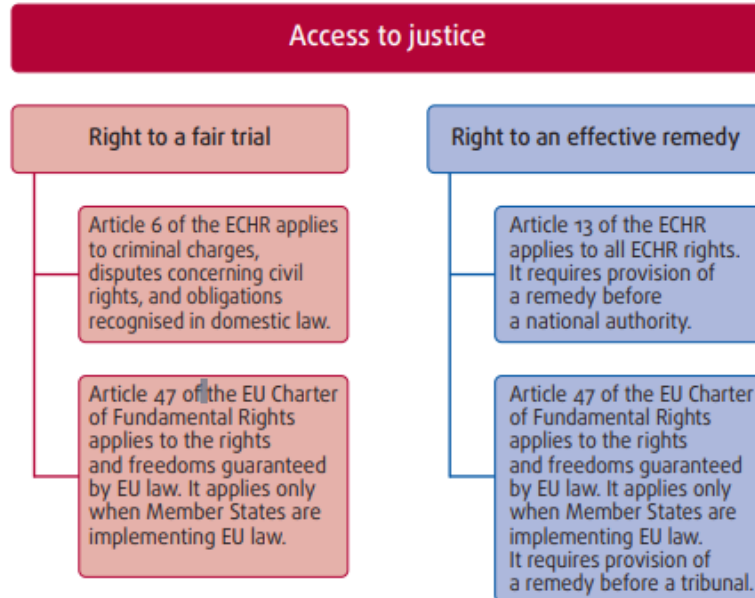
Charter rights that correspond to ECHR rights are given the same meaning and scope as those laid down in the ECHR, in accordance with Article 53 of the Charter. The Explanations to the Charter – which serve as an interpretative tool to help understand its content but are not legally binding – provide additional guidance on this point. This overlap means that ECtHR case law is frequently important for interpreting rights under the EU Charter of Fundamental Rights. However, as outlined below, the legal systems of the ECtHR and CJEU are different, which may affect the protection of rights at the national level.

⁸ https://www.echr.coe.int/documents/handbook_access_justice_eng.pdf

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0306>



Figure: Access to justice rights under EU and CoE law



As the Figure indicates, Article 6 of the ECHR has limited scope and only applies to cases concerning **criminal charges**, civil rights and obligations recognised in domestic law. Article 47 of the EU Charter of Fundamental Rights is not as confined and applies to all rights and freedoms recognised by EU law, which include certain additional economic, social and cultural rights. However, there **is an important difference** in terms of applicability. Article 6 of the ECHR applies to all situations falling within the definition of “criminal charges or civil rights and obligations”. Article 47 of the Charter only applies when Member States are applying EU law, such as when implementing the Anti-Trafficking Directive. It thus provides a less comprehensive system of protection.

Article 13 of the ECHR sets out the right to **an effective remedy** before a national authority for arguable violations of ECHR rights. The right to an effective remedy under Article 47 of the EU Charter of Fundamental Rights applies to all rights and freedoms guaranteed by EU law: it is not limited to violations of the rights included in the Charter. Article 47 also explicitly guarantees access to a remedy before a ‘tribunal’, thus offering more extensive protection. It is important to note that, for EU Member States, if the EU Charter of Fundamental Rights does not apply, the ECHR may apply, as all 27 Member States are also States Parties to the ECHR.

- fair and public hearing
- right to be advised
- right to be defenced
- right to be represented
- legal aid
- right to effective remedy
- independent tribunal
- impartial tribunal

Although the systems are distinct, both CoE and EU law guarantee the right to an effective remedy and the right to a fair trial, to be primarily enforced at national level, within the



two instruments' respective scopes of application, and in accordance with the relevant rules and conditions set out by the CJEU and the ECtHR. Many rights in the EU Charter of Fundamental Rights are described similarly to rights in the ECHR. Article 52 (3) of the Charter confirms that, where Charter rights correspond to ECHR rights, the meaning and scope of those rights are the same, although more extensive protection can be provided. This means that ECtHR case law is relevant for interpreting Charter rights where these rights correspond.



8. TRUE or FALSE

10

<https://create.kahoot.it/v2/details/23630fac-ebfe-42c7-a38e-ccd515d7d214>

Check your knowledge with this quiz!



9. Questions for review

1. List the untouchable core values of the EU!
2. How many chapters does the Charter have? List the titles of the chapters.
3. What is the legal character of the Charter?
4. Explain the link between ECHR and CFR!
5. What are the components of access to justice?

References:

Nikos Lavranos: Revisiting Article 307 EC: The Untouchable Core of Fundamental European Constitutional Law Values and Principles, July 2009

https://www.researchgate.net/publication/228176277_Revisiting_Article_307_EC_The_Untouchable_Core_of_Fundamental_European_Constitutional_Law_Values_and_Principles



Further Readings

Protection of human rights in Europe / Kruzslicz, Péter Pál and Sulyok, Márton: Protection of human rights in Europe. (2019) [Online educational package (e-learning lesson/topic)]

<http://eta.bibl.u-szeged.hu/1950/>

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