



RESPECT FOR FUNDAMENTAL RIGHTS IN THE UNION

For a long time, the legal basis for fundamental rights at EU level consisted essentially of the reference made in the Treaties to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The case law of the Court of Justice of the European Union has thus long been instrumental in enforcing respect for human rights in the EU. Since the entry into force of the Treaty of Lisbon, the Charter of Fundamental Rights of the European Union, which is now legally binding, has expanded this legal basis.

LEGAL BASIS

The protection of fundamental rights is one of the basic tenets of EU law. For a long time, the European Treaties did not incorporate a written list of these rights, containing only a reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The Treaties also referred to those fundamental rights which result from the constitutional traditions common to the Member States as general principles of Community law. Moreover, through its case law the Court of Justice of the European Union has contributed greatly over time to the development of and respect for fundamental rights.

Following the adoption of the Treaty of Lisbon in late 2009, the situation has changed significantly, as the EU has a Charter of Fundamental Rights that is now legally binding. Article 2 of the Treaty on European Union (TEU) provides that ‘the Union is based 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’.

Article 6 TEU provides that:

‘The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of ... 12 December 2007, which shall have the same legal value as the Treaties.’

‘The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.’

‘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.’

Article 7 TEU takes over a provision from the earlier Treaty of Nice which establishes both a prevention mechanism, where there is ‘a clear risk of a serious breach’ by a Member State of the values referred to in Article 2 TEU, and a sanction mechanism, in the event of a ‘serious and persistent breach’ by a Member State of those values. The European Parliament has both a right of initiative, by means of which it can call for the first of these mechanisms to be applied, and a right to exercise democratic control, as it must consent to their implementation.

A reference to human rights and fundamental freedoms can also be found in the provisions on the Union’s external action (Article 21 TEU). Article 67 of the Treaty on the Functioning of the

European Union (TFEU) provides that ‘the Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States’.

Certain provisions of the Treaty also enshrine specific rights. This is the case, for example, with Article 8 TFEU, as regards gender equality, and Article 10, as regards combating discrimination.

Article 15 TFEU, which takes over a provision from the earlier Treaty of Nice, enshrines the right of every natural or legal person in a Member State to have access to the documents of the Union’s institutions, bodies and agencies. Article 16 TFEU enshrines the right to protection of personal data.

ACHIEVEMENTS

A. Case law of the Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) has long emphasised the need to respect the fundamental rights of every individual. Its large body of case law lays down standards of protection on the basis of a range of legal sources: the provisions of the Treaties, including the EU Charter of Fundamental Rights; the international conventions to which the Treaties refer — notably the ECHR and the 1951 Geneva Convention Relating to the Status of Refugees; fundamental rights as they result from the constitutional traditions common to the Member States; and the international legal instruments to which the Member States are parties and those to which the EU is a party.

The CJEU examines not only the compatibility of EU legislation with fundamental rights, but also the compatibility of measures taken at national level by the Member States to apply or comply with EU law.

The case law of the CJEU has essentially developed on the basis of preliminary rulings (Article 267 TFEU).

B. The Charter of Fundamental Rights of the European Union

The Charter ([1.1.6](#)) was proclaimed by the Commission, the Council and Parliament on 7 December 2000 at the Nice European Council, and subsequently reaffirmed and amended in 2007. Since December 2009 it has been legally binding and has the same legal value as the Treaties, in accordance with Article 6 TEU.

The rights it sets out are not new: the Charter is founded on the basis of ‘established law’, that is, it brings together in one document the fundamental rights already recognised by the EU Treaties, the constitutional principles common to the Member States, the ECHR and the Social Charters of the EU and the Council of Europe. However, the text places special emphasis on problems arising from current and future developments in the areas of information technology or genetic engineering by enshrining rights such as the protection of personal data or rights in connection with bioethics. It also responds to recent calls for transparency and impartiality in the functioning of the Union’s administration by incorporating the right to good administration and of access to administrative documents, drawing on the key elements of the case law of the CJEU in this area.

The Charter brings together all personal rights in a single text. It thus implements the principle of the indivisibility of fundamental rights. Breaking with the distinction hitherto maintained by European and international texts between civil and political rights, on the one hand, and economic and social rights, on the other, it lists all the rights in question, grouping them around

a number of key principles: human dignity, fundamental freedoms, equality, solidarity, citizens' rights and justice.

The Charter aims only to protect the fundamental rights of individuals in the context of the action taken by the EU institutions and Member States to implement the EU Treaties. A protocol sets out a number of derogations for the United Kingdom and Poland, the scope of application of which is, however, unclear.

C. The EU's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

This Convention, adopted in the Council of Europe in 1950 and supplemented by a series of protocols, is a key text in the area of fundamental rights. It is divided into two parts: a section on rights and freedoms comprising 17 articles, and a section describing the operating procedures and the competences of the European Court of Human Rights, which sits in Strasbourg. The Court has produced a large body of case law clarifying the various rights set out in the ECHR. These include the right to life (Article 2), the prohibition of torture (Article 3) and the prohibition of slavery and forced labour (Article 4).

The EU as such is not a party to the ECHR. All its Member States are parties to it, however. Article 6(2) TEU requires that the EU accede to the ECHR, which would mean that the EU, just as its Member States are at present, would become subject, as regards respect for fundamental rights, to review by a legal body which is external to the EU and which specialises in protecting fundamental rights: namely, the European Court of Human Rights. Following accession, European citizens, but also third-country nationals present on the territory of the EU, will be able to challenge legal acts adopted by the EU directly before the Court on the basis of the provisions of the ECHR, in the same way that they challenge legal acts adopted by its Member States.

Negotiations on EU accession are currently taking place between the EU and the Council of Europe. In July 2013, the Commission asked the CJEU to rule on the compatibility of the Draft Accession Agreement with the Treaties. On 18 December 2014 the CJEU concluded that the draft agreement on the accession of the EU to the ECHR is not compatible with EU law (Opinion 2/13).

D. The EU Agency for Fundamental Rights

The Agency is the successor body to the European Monitoring Centre on Racism and Xenophobia set up in 1997. The main aim of the Monitoring Centre was to provide the EU and its Member States with objective, reliable and comparable data at European level on racism, xenophobia and anti-Semitism in order to help them take appropriate measures or formulate appropriate policies. The Agency was established by a Council regulation of February 2007^[1]. It has been operational since March 2007 and is based in Vienna. Its goal is to provide EU institutions and Member States with assistance and expertise in the field of fundamental rights. The Agency is not authorised to handle individual complaints, it does not have decision-making powers in the area of regulation and it does not have the power to monitor fundamental rights in the Member States in accordance with Article 7 TEU. A five-year multiannual framework sets out the areas in which it may act. Its tasks include, in particular, the collection, analysis, dissemination and evaluation of relevant information and data, conducting research and scientific surveys, drawing up preparatory and feasibility studies, and the publication of an annual report on fundamental rights and of thematic reports.

[1] Regulation (EC) No 168/2007, 15 February 2007, OJ L 53, 22.2.2007.

ROLE OF THE EUROPEAN PARLIAMENT

A. General approach

Parliament has always attached great importance to respect for fundamental rights in the Union. Since 1993, it has held a debate and adopted a resolution on this issue every year on the basis of a report by its Committee on Civil Liberties, Justice and Home Affairs. In addition, it has adopted several resolutions addressing specific issues concerning fundamental rights protection in the Member States.

B. Specific actions

Parliament has focused in particular on the issue of codifying fundamental rights in a legally binding document. It was responsible for the declaration of principle on the definition of fundamental rights adopted by the EU's three political institutions (Commission, Council and Parliament) on 5 April 1977 and expanded in 1989. In 1994, it drew up a list of the fundamental rights guaranteed by the Union. It placed special emphasis on the drafting of the Charter by making it 'one of its constitutional priorities' and stipulating requirements to be met by the Charter, in particular that:

- the document should be given fully binding legal status by being incorporated into the Treaty on European Union ('A Charter ... constituting merely a non-binding declaration and ... doing no more than merely listing existing rights would disappoint citizens' legitimate expectations'); Parliament thus called for the Charter to be incorporated into the Treaty of Nice and for it to be incorporated into the new Constitutional Treaty;
- it should be recognised that fundamental rights are indivisible, by making the Charter applicable to all the institutions and bodies of the EU and all its policies, including those under the second and third pillars in the context of the powers and functions conferred upon it by the Treaties.

Finally, Parliament has regularly called for the EU to accede to the ECHR, stressing that this would not duplicate the role of the now binding Charter. It called several times for the setting up of the Agency for Fundamental Rights.

In two resolutions in 2014, Parliament also called for the creation of a 'Copenhagen mechanism', that is, a more efficient tool to ensure that Member States effectively respect the fundamental values of the Union and the requirements of democracy and the rule of law. On 25 October 2016, Parliament adopted a resolution with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights.

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