

The scope of application of the EU Charter in national legal orders



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Magdalena Ličková

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Outline

- When does the Charter apply?
 - Is there a relevant link with EU law?
 - Not all situations are clear-cut
- What role can the Charter play and with which legal consequences?
 - Yardstick for validity of EU law
 - Yardstick for applicability of the given rule of national law
 - Tool of conform interpretation
 - Direct effect of (some of) its provisions
- What is its relationship vis-à-vis other instruments of fundamental rights protection?
 - Particular relevance of the ECHR within the EU system of protection of fundamental rights
 - National standards of protection

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The Charter and EU law

Article 6 (ex Article 6 TEU)

1. 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. ←

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. 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.

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Article 51 of the Charter

- '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.'
- ➡ The conditions for the applicability of the Charter, as a matter of EU law, not to be confused with its use outside of its scope. For the description of the practice before the national courts see the respective national reports in Bobek M., Adams-Prassl J., *The EU Charter of Fundamental Rights in the Member States* (2020) Hart Publishing, 632 p.

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Explanations to the Charter

Explanations relating to the Charter of Fundamental Rights

OJ C 303, 14.12.2007, p. 17–35 (BG, ES, CS, DA, DE, ET, EL, EN, FR, GA, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)

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14.12.2007 EN Official Journal of the European Union C 303/17

EXPLANATIONS ⁽¹⁾ RELATING TO THE CHARTER OF FUNDAMENTAL RIGHTS

(2007/C 303/02)

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

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Explanation relating to Article 51 of the Charter

'The aim of Article 51 is to determine the scope of the Charter. [...]

As regards the Member States, it follows unambiguously from the case-law of the Court of Justice that the requirement to respect fundamental rights defined in the context of the Union is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, Case C-260/89 ERT [1991] ECR I-2925; judgment of 18 December 1997, Case C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case-law in the following terms: 'In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ...' (judgment of 13 April 2000, Case C-292/97 [2000] ECR I-2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.'

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Åkerberg Fransson
C-617/10 (2013)

- Article **51(1) of the Charter** confirms the preexisting situation [18]
- 'Since the fundamental rights guaranteed by the Charter must [...] be complied with where national legislation falls within the scope of European Union law, situations cannot exist which are covered in that way by European Union law without those fundamental rights being applicable. **The applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter.**' [21]
- 'Where, on the other hand, a legal situation **does not come within the scope** of European Union law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction' [22]
 - The idea of the fundamental rights being the shadow of EU law. Lenaerts, K., and Gutiérrez-Fons, J.A., 'The Place of the Charter in the EU Constitutional Edifice', in Peers, S., Hervey, T., Kenner, J., and Ward, A., The EU Charter of Fundamental Rights: A Commentary, C.H. Beck, Hart, Nomos, 2014, p. 1560-1593, at 1568.

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[Procedural parenthesis: the Charter and proceedings based on Article 267 TFEU]

- Limits imposed on the applicability of the Charter are reflected at **the level of the jurisdiction of the Court** to give a preliminary ruling → an element to be kept in mind when making a preliminary reference
- '[...] it must be noted that, under Article 51(1) of the Charter, the provisions of the Charter are addressed to the Member States only when they are implementing EU law. While the circumstances of such implementation can vary, **it must nevertheless be clearly and unequivocally apparent from the request for a preliminary ruling that a rule of EU law other than the Charter is applicable to the case in the main proceedings.** Since the Courts of the European Union have no jurisdiction to give a preliminary ruling where a legal situation does not come within the scope of EU law, **any provisions of the Charter that may be relied upon by the referring court or tribunal cannot, of themselves, form the basis for such jurisdiction.**'

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[Procedural parenthesis: the Charter and proceedings based on Article 267 TFEU]

- See also pt 10 of Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings:
- „With regard to references for a preliminary ruling concerning the interpretation of the Charter of Fundamental Rights of the European Union ('the Charter'), it must be noted that, under Article 51(1) of the Charter, the provisions of the Charter are addressed to the Member States only when they are implementing EU law. While the circumstances of such implementation can vary, it must nevertheless be clearly and unequivocally apparent from the request for a preliminary ruling that a rule of EU law other than the Charter is applicable to the case in the main proceedings. Since the Courts of the European Union have no jurisdiction to give a preliminary ruling where a legal situation does not come within the scope of EU law, any provisions of the Charter that may be relied upon by the referring court or tribunal cannot, of themselves, form the basis for such jurisdiction.“

Parenthesis within the parenthesis: Looking for information

About usCase procedureCase-lawLegal resourcesTransparencyWork for the CourtMedia centre

Home / Case procedure / Court of Justice / Procedural texts

Texts governing procedure

Consolidated version of the Treaty on European Union

Consolidated version of the Treaty on the Functioning of the European Union

Consolidated version of the Treaty establishing the European Atomic Energy Community

Protocols: Annexes to the Treaty on the Functioning of the European Union

Charter of Fundamental Rights of the European Union

Statute of the Court of Justice of the European Union

Consolidated Version (1-9-2024)

←

Council Decision of 25 June 2013 increasing the number of Advocates-General of the Court of Justice of the European Union (2013/336/EC)

→

Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

→

Rules of Procedure of the Court of Justice

Consolidated Version (1-9-2024)

←

Supplementary Rules (14-1-2014)

Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (1-10-2024)

↓

Practice directions to parties concerning cases brought before the Court (1-9-2024)

And nowlooking for the (old database of the) Court's case-law

The screenshot shows the InfoCuria search interface. At the top, there is a search bar with the text "Search" and a magnifying glass icon. To the left of the search bar is the InfoCuria logo. Below the search bar, there are links for "Reset search" and "Advanced search". A red heart icon is placed over the "Advanced search" link. Below the search bar, there is a "Show filters" button. The main section is titled "List of cases" and shows a list of cases. The first case is "C-154/26 - Volkswagen" with a date of "03/03/2026" and a status of "Pending". The second case is "C-156/26 - Volkswagen" with a date of "03/03/2026" and a status of "Pending". Both cases are from the "Court of Justice".

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Looking for the Court's case-law ...

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When does the Charter apply?

- 'The concept of 'implementation of Union law', within the meaning of Article 51(1) of the Charter, presupposes a degree of connection between an act of EU law and the national measure at issue above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other'. Judgment of 29 July 2024 (GC) *protectus* (C-185/23 [42]).
- The so called 'lida test': 'in order to determine whether a national measure involves 'implementing Union law' within the meaning of Article 51(1) of the Charter, it is necessary to determine, inter alia, whether that national legislation is intended to implement a provision of EU law; the nature of the legislation at issue and whether it pursues objectives other than those covered by EU law, even if it is capable of indirectly affecting EU law; and also whether there are specific rules of EU law on the matter or rules which are capable of affecting it'. Judgment of 8 November 2012, *lida* (C-40/11, EU:C:2012:691, [79], referring to *Annibaldi* EU:C:1997:631, [21 to 23]; recalled e.g. in judgments of 8 May 2013, *Ymeraga* (C-87/12, EU:C:2013:291 [41]); of 6 March 2014 *Syracusa* (C-206/13, EU:C:2014:126 [25]); of 10 July 2014, *Julian Hernández* (C-198/13, EU:C:2014:2055, [37] and judgment of 29 July 2024 (GC) *protectus* (C-185/23 [43]).
- However, 'neither cumulative nor exhaustive', AG Bobek in *Ispas* C-298/16, [47].
- **The classical scenarios:**
 - Direct application of a rule of EU law (typically a regulation)
 - Application of a national rule that implements EU law (typically a national law transposing a directive)
 - Derogation scenario – national law making use of the derogations provided for by EU law

The underlying difficulty: the scope of the harmonized standard; some situations may seem remote with no immediately visible' rule of EU but a rule of EU law still affected.

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Scale of links (exemples)

- Judgment of 1st August 2022 [GC], *Staatssecretaris van Justitie en Veiligheid (Refusal to take charge of an Egyptian unaccompanied minor)* (C-19/21, EU:C:2022:605)
 - Direct application of harmonised procedural rules, a possible gap identified by the national court: Article 27(1) Dublin III Regulation (now repealed) provides for the applicants' right to an effective remedy against a transfer decision. Does it provide also for a remedy against a refusal to take charge of an unaccompanied minor?
- Judgment of 18 December 2025, *Soledil*, C-320/24, EU:C:2025:993)
 - Directive 93/13 on unfair terms in consumer contracts, Article 47 of the Charter
 - *Ex officio* judicial review and force of *res judicata*
- Judgment of 21 April 2026, *Commission v Hungary (Valeurs de l'Union)* (C-769/22, EU:C:2026:326) [420-421]
 - The applicability of the Charter in the situation of restriction
 - National measures restricting free movement of services: must comply with the Charter, which requires, in particular, that they do not impose any limitations on the rights and freedoms enshrined therein or, if they do, that those limitations are justified in the light of the requirements set out in Article 52(1) thereof.

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Role(s) of the Charter

- **Determination of concepts of secondary law:**
 - See the examples discussed above
 - '...the Member States, in particular their courts, must not only interpret their national law in a manner consistent with EU law but also make sure they do not rely on an interpretation of an instrument of secondary legislation which would be in conflict with the fundamental rights protected by the legal order of the European Union.' E.g. judgment of 30 January 2024 [GC], *Landeshauptmann von Wien (Family reunification with a minor refugee)* (C-560/20, EU:C:2024:96 [48] or judgment of 21 December 2011 [GC], N. S. (C-411/10, EU:C:2011:865 [77])).
- **Validity of EU secondary law:**
 - See, e.g., judgment of 8 April 2014 [GC], *Digital Rights Ireland and Others* (C-293/12 and C-594/12, EU:C:2014:238); judgment of 21 March 2024 [GC], *Landeshauptstadt Wiesbaden* (C-61/22, EU:C:2024:251).
- **Determination of concepts of EU primary law:**
 - Judgment of 4 September 2025, *Studio Legale Ughi e Nunziante v EUIPO*, C-776/22 P, EU:C:2025:644 (not a preliminary ruling but an appeal in relation to the duty for the 'privileged applicants' to be represented before the courts of the EU by a lawyer under Article 20 of the Statute of the Court of Justice)
- **Yardstick for applicability of the given rule of national law**, however, direct effect of some of its provisions only:
 - **Article 47** of the Charter: eg Judgment of 29 July 2019 [GC] *Torubarov* (C-556/17, EU:C:2019:626); EU:C:2018:193 [68];
 - **Article 50** of the Charter: eg judgment of 20 March 2018, *Garlsson Real Estate and Others*, C-537/16, EU:C:2018:193 [68];
 - **Article 21** of the Charter: the prohibition of discrimination on grounds of religion or belief and on the grounds of age, eg judgments of 15 January 2014 [GC], *Association de médiation sociale* (C-176/12, EU:C:2014:2 [47] or of 22 January 2019, *Cresco Investigation* [GC] (C-193/17, EU:C:2019:43);
 - **Article 31(2)** of the Charter and the right to paid annual leave: judgment of 6 November 2018 [GC] *Max-Planck-Gesellschaft zur Förderung der Wissenschaften* (C-684/16 EU:C:2018:874 [79-80].
 - However, e.g., judgment of the Court of 11 July 2024, *Plamaro*, (C-196/23) EU:C:2024:596 on Articles 27 and 30 of the Charter.

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Art 52(3) of the Charter

- 'In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.'
- The level of protection guaranteed under the Charter cannot be lower than the level of protection under the ECHR
- Judgment of 4 October 2024, *Real Madrid Club de Fútbol* (C-633/22, EU:C:2024:843) [51]
 - Brussels Regulation, public policy ground for refusal of recognition of a judgment issued in another Member State, freedom of expression.
- Pending request for an opinion submitted by the European Commission pursuant to Article 218(11) TFEU (*Opinion 1/25*): Is the revised draft agreement providing for the accession of the [ECHR] compatible with the Treaties

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Article 53 of the Charter

- National standards of protection: judgment of 26 February 2013 [*GC*], *Melloni* (C-399/11, EU:C:2013:107):
- [59] ... by virtue of the principle of primacy of EU law, which is an essential feature of the EU legal order, rules of national law, even of a constitutional order, cannot be allowed to undermine the effectiveness of EU law on the territory of that State.
- [60] It is true that Article 53 of the Charter confirms that, where an EU legal act calls for national implementing measures, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of EU law are not thereby compromised.
- [61] However, ... Article 4a(1) of Framework Decision 2002/584 does not allow Member States to refuse to execute a European arrest warrant when the person concerned is in one of the situations provided for therein.
- See also (implicitly) order of 20 September 2024, [*Anacco*] (C-504/24 PPU EU:C:2024:779, especially at [58]), a request for a preliminary ruling from the Corte d'appello di Roma.

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Further reading ...

- Peers, S. ; Hervey, T. ; Kenner, J. ; Ward, A.; Peers, *The EU Charter of Fundamental Rights: A Commentary*, Oxford: Hart Publishing, second edition (2021).
- Lenaerts, K., and Gutiérrez-Fons, J.A., 'The Place of the Charter in the EU Constitutional Edifice', in Peers, S., Hervey, T., Kenner, J., and Ward, A., *The EU Charter of Fundamental Rights: A Commentary*, C.H. Beck, Hart, Nomos, 2014, pp. 1560-1593.
- Casarosa, F.; Moraru, M. , *The practice of judicial interaction in the field of fundamental rights : the added value of the Charter of Fundamental Rights of the EU* (2022) Elgar, xxvii-410 p.
- Bobek M., Adams-Prassl J., *The EU Charter of Fundamental Rights in the Member States* (2020) Hart Publishing, 632 p.
- Dougan, M., 'Judicial Review of Member State Action Under the General Principle and the Charter: Defining the "Scope of Union Law"', *Common Market Law Review*, Vol. 52, 2015, pp. 1201 to 1245.
- Fontanelli, F., 'The Implementation of European Union Law by Member States under Article 51(1) of the Charter of Fundamental Rights', *Columbia Journal of European Law*, Vol. 20, 2014, pp. 193 to 247.
- Sarmiento, D., 'Who's Afraid of the Charter? The Court of Justice, national courts and the new framework of fundamental rights protection in Europe', *Common Market Law Review*, Vol. 50, 2013, pp. 1267 to 1304.

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