

APPLYING THE CHARTER IN
NATIONAL PROCEEDINGS:
ITS APPLICATION, SCOPE AND
INTERPRETATION

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- *The role of the Charter within the EU legal framework and its relevance for the national legal order: legal nature, legal value, role, judicial remedies within the EU for violations of fundamental rights, relevance of the Charter for the national judge*
- *Introductory overview of key underlying principles of the Charter*



Applying the Charter in national proceedings: its application, scope and interpretation

International law and national law (art. 11 of the Constitution)

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(1) The Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to.

(2) Treaties ratified by Parliament, according to the law, are part of national law.

(3) If a treaty Romania is to become a party to comprises provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution.

International treaties on human rights (article 20 of the Constitution)

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(1) Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to.

(2) Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions.

The role of the ECHR

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- „constitutional instrument of the European public order” (*Loizidou v. Turkey*, 1995).
- authentic interpretation of the ECHR
 - expansion of the content of existing rights
 - autonomous notion
 - positive obligations

Obligation to respect human rights

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Article 1 of the ECHR

- The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I
- Minimum standard

Legal proceedings

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- Plea of unconstitutionality
- Directly before the national court
 - *Prima facie*
 - “Competing” standards: national and under the ECHR

The obligation to respect human rights as an EU Member State

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lack of provision in the original Treaties

- fundamental rights as “general principles of EC law”, developed by the CJEU
- legal basis: common constitutional traditions; international instruments, especially the ECHR
- scope of application: EU institutions and agencies; Member States when acting within the sphere of EC law
- subsequent stipulation in the Treaties
- EU powers concerning an exhaustive list of protected criteria

Charter of Fundamental Rights of the European Union

Limitations on the exercise of the rights and freedoms (Article 52)

Any limitation must:

- ▣ be provided by law
- ▣ respect the essence of the right
- ▣ be necessary to meet objectives of general interest recognised by the Union or to protect others' rights
- ▣ respect the principle of proportionality

Interpretation of the rights (Article 52)

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- according to their source:
 - rights for which provision is made in the Treaties > under the conditions set out therein
 - rights corresponding to ECHR rights > same meaning and scope > ECHR standard is a minimum standard
 - rights stemming out of common constitutional traditions > to be interpreted in harmony with those traditions

- national laws and practices > taken into full account
- the Explanations

Vertical direct effect?

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Article 51 (1) first part:

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.

Horizontal direct effect?

Article 51 (1) second part:

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.

Scope of application of the Charter

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Article 51

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.** (...)
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.

“Member States only when they are implementing Union law”

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- restrictive interpretation:
 - as agents in the application of EU law *and*
 - when transposing a directive

- broader interpretation:
 - as agents in the application of EU law *and*
 - when transposing a directive *and*
 - **whenever acting within the scope of application of EU law**

By scope of application

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ECHR

Charter

By number of rights protected

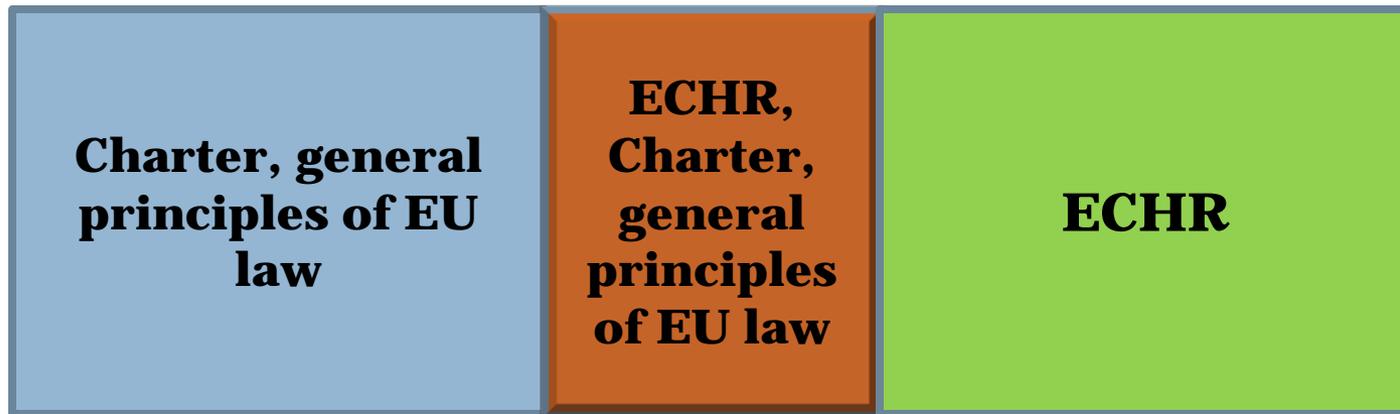
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Charter

ECHR

rights other than those provided by the ECHR

rights provided by the ECHR



cases within the scope of application of EU law

cases outside the scope of application of EU law

Thank you!

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