

RELATIONSHIP OF THE CHARTER
TO THE ECHR AND
NATIONAL HUMAN RIGHTS
PROVISIONS

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- The role of the Charter within the EU legal framework and its relevance for the national legal order
- Introductory overview of key underlying principles of the Charter
- Using the Charter in national proceedings

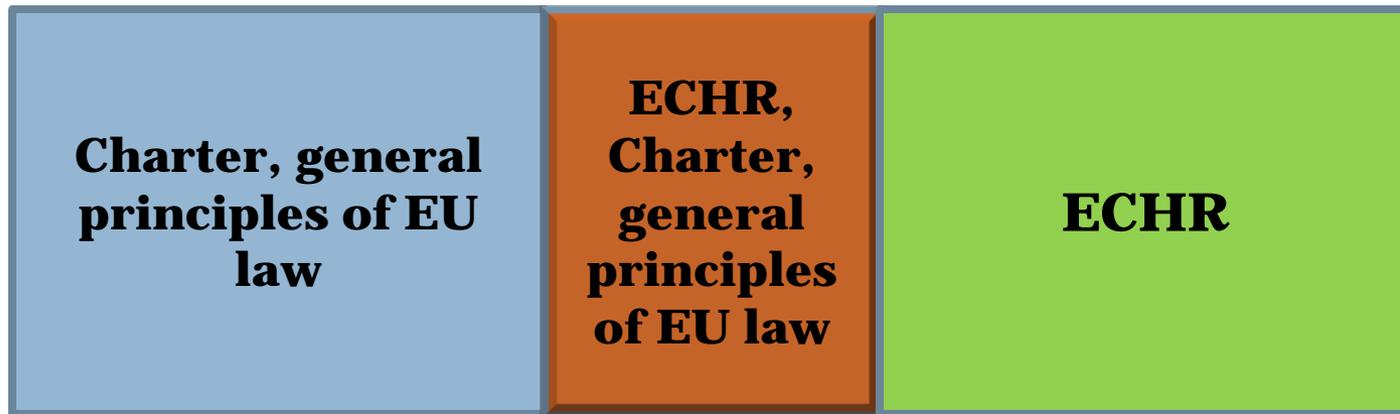


Relationship of the Charter to the ECHR and national human rights provisions

Accession of the EU to the ECHR: why, how, to what effect?

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

Current situation

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- Transfer of competences from Member States to the EU > potential infringement
- National implementing measures of EU acts > potential infringement

Only Member States (and not the EU) responsible before the ECHR

Dilemma: “competing” standards EU-ECHR

Divergences and mutual influences

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CJEU

- *Orkem* (1989): art. 6 does not give an undertaking the right not to give evidence against oneself
- *Huls* (1999): presumption of innocence applies to competition proceedings which may result in fines

ECtHR

- *Funke* (1992): art. 6 includes the right to remain silent and not to contribute to incriminating oneself

Divergences and mutual influences

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CJEU

- *Hoechst* (1989): right to the inviolability of the home – *does not* include business premises
- *Roquette Frères* (2002) – includes business premises

ECtHR

- *Niemitz* (1992): right to the inviolability of the home – includes business premises

ECHR

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- *Emesa Sugar* (2005): impossibility to address the Opinion of the Advocate General in a customs case
- *Cantoni* (1996): art. 7, legality – possibility to examine legislation that transposes European directives
- *Senator Lines* (2004): right of access to justice and presumption of innocence

Matthews (1999)

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- EU law found in violation of the ECHR was a primary act
- primary acts not reviewable by the CJEU

ECtHR: States
retain responsibility for
violations of the
ECHR



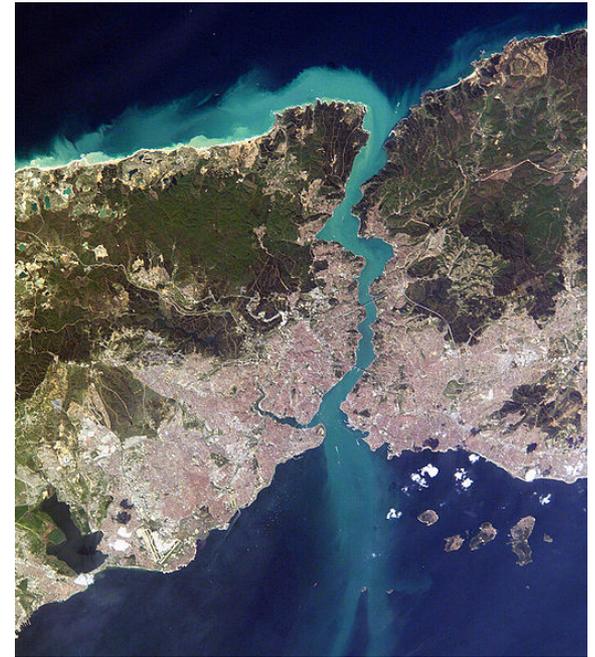
Bosphorus (2005)

- Impounding without compensation of an aircraft in the application of an EU Regulation adopted pursuant a UN Resolution
- ECHR has jurisdiction (right to property)
- Preliminary question to the CJEU: measure is proportional to the objective pursued

Bosphorus (2005)

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- ECHR:
 - ▣ EU provides human rights protection in an ‘equivalent’/‘comparable’ manner
 - ▣ relative presumption that the State had respected the requirements of the ECHR



Michaud (2012)

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- 3 EU directives aimed at preventing the use of the financial system for money laundering
- the right to lawyer–client confidentiality
- a request for a preliminary reference rejected by the French court
- French Government: France complied with the ECHR because EU offers an equivalent level of protection
- dilemma?
- ECHR: although individual access to the CJEU is far more limited than that to the ECtHR, the supervisory mechanism provided for in EU law affords protection comparable to that provided by the Convention
- application to the case – no violation of the ECHR

Other organisations

Obligations stemming from the UN Charter

ECHR/CJEU cannot review the legality of Resolutions of the UN Security Council, but only of measures of application where States have discretion (*Nada, Kadi*)

Accession to the ECHR

- Difficulties with the enforcement of judgments
- Divergences of jurisprudence
- Equality before the ECHR
- Autonomy of EU law
- Subsidiarity

5 aprilie 2013
Draft accession agreement
finalised

Before accession - indirect review of EU action by the ECHR

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- Member State responsible under ECHR:
 - EU act leaves discretion in implementation to the Member State (e.g. *Cantoni*)
 - EU act = international agreement freely concluded by the Member State (e.g. *Matthews*)
- Member State benefits from relative presumption of equivalent protection as long as presumption about the whole EU system holds true:
 - EU act leaves no discretion in implementation to the Member State (e.g. *Bosphorus*)
- Member States responsible collectively:
 - EU act which does not require implementation (e.g. *Senator Lines*)

After accession to the ECHR

Draft accession agreement:

- **The co-respondent mechanism**
- **Prior involvement of the CJEU in cases in which the EU is a co-respondent**

Thank you!

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