

Case studies on scope and applicability of Charter

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Case #1: German Wine Co vs Department of Trade and Trade Practices

- Issue: Is Reg 1924/2006, which prohibits a producer/distributor of wine from claiming that their wine is “easily digestible” – even if this claim is true – compatible with Arts 15(1)/16 of the Charter?

Case #2: Mr Drunk v Head of Traffic Police

- Issue: Does EU law preclude national legislation which does not recognize a right of appeal against decision imposing penalties for “minor” breaches of the road traffic regulations, even when those decisions impose a small financial penalty and result in points being added to a driver’s licence?

Case #3: Mr Z v Ministry for Internal Affairs

- **Issue:** Does Article 4 EUCFR preclude Member States, including national courts, from transferring an asylum seeker to the Member State indicated as responsible under EU law where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment pursuant to Art 4 EUCFR?

Case #4: Poor Firm Co v Member State X

- **Issue:** Is a national mechanism for legal aid, intended inter alia to exempt people from paying the administrative charge for legal proceedings and where the grant of such aid is subject to more restrictive conditions in respect of legal as opposed to natural persons, consistent with EU law; especially Article 47 EUCFR?

Overview

- #1: Challenge of national measure enforcing EU legislation (2006 Reg) on basis of EUCFR
- #2: Challenge of national procedural rule on basis of EUCFR
- #3: Challenge of national measure adopted on basis of EU legislation (2003 Reg) for compatibility with EUCFR
- #4: Challenge of national procedural rule in dispute about correct implementation of EU Directive

Case #1: German Wine Co vs Department of Trade and Trade Practices

- Source: Case C-544/10 (2012)
- Claimant challenging national measure enforcing EU legislation on basis EUCFR

Case #1: German Wine Co vs Department of Trade and Trade Practices

- Reference:
- Is it compatible with the first subparagraph of Article 6(1) of the Treaty on European Union, read in conjunction with Article 15(1) (freedom to choose an occupation) and Article 16 (freedom to conduct a business) of the Charter, for a producer or marketer of wine to be prohibited, without exception, from making in its advertising a health claim of the kind at issue in the main proceedings, even if that claim is correct?

Held

- Charter has same legal value as Treaties
- Relevant provisions: Art 15/16 EUCFR AND also important to take into account Art 35(2) EUCFR (high level of protection of health)
- Legislation designed to protect health – objective recognised by Art 35 EUCFR
- Freedom to choose occupation and conduct business not absolute freedoms
- SO marketing restriction is **compatible** with EUCFR

Mr Drunk v Head of Traffic Police

- Challenge to applicability of national law where issue is compatibility of national procedural rules with EU CFR
- Case C-27/11 Anton Vinkov (2012)

Held

- Requirements flowing from protection of FHR are binding on MS whenever they implement EU law
- Provisions of EUCFR addressed to MS only when implementing EU law
- Where national legislation within scope of EU law, CJEU must provide all criteria needed for national court to determine whether national law is compatible with fundamental rights

Held

- BUT “it is not apparent from the order for reference that the national legislation constitutes a measure implementing EU law or that it is connected in any other way with EU law. Accordingly the jurisdiction of the Court to rule on the reference for a preliminary ruling in so far as it relates to the fundamental right to an effective remedy is not established (para 59)

Mr Z v Ministry for Internal Affairs

- Challenge at national measure adopted on basis of EU Regulation
 - National government: argues that measure does not fall within scope of EU law
- Case C-411/10 NS

Question referred

- Does a decision made by a Member State under Article 3(2) of Regulation 343/2003 on whether to examine a claim for asylum which is not its responsibility under the criteria set out under Chapter III of the Regulation fall within the scope of EU law for the purposes of Article 6 TEU and/or Article 51 EUCFR?

Held

- Under Article 51(1) EUCFR, Charter only binds MS when they are implementing EU law
- Nature of power granted here to MS:
 - Art 3(2) grants MS a discretionary power
 - This forms part of the mechanisms for determining the individual MS responsible for an asylum application provided for under that regulation and, therefore, merely an element of the Common European Asylum System

Held

- A MS which exercises that discretionary power must be considered as implementing EU law within the meaning of Article 51(1) EUCFR

Poor Firm Co v MS X

- Challenge about breach of EU law by MS where compatibility of national procedural rules law with EUCFR questioned
- Case C-29/09 DEB, 2010

Question referred

- “In view of the fact that Member States may not, through the structuring of conditions under national law governing the award of damages and of the procedure for pursuing a claim seeking to establish State liability under EU law, make the award of compensation in accordance with the principles of State liability in practice impossible or excessively difficult, must there be reservations with regard to a national rule under which the pursuit of a claim before the courts is subject to the making of an advance payment in respect of costs, and a legal person, which is unable to make that advance payment, does not qualify for legal aid?”
- (No reference to EUCFR!)

Held

- Settled case law that national procedural rules governing actions for safeguarding individual's rights under EU law must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law
- Here: question referred concerns right of a legal person to effective access to justice – in EU law, the principle of effective judicial, a general principle of EU law and a Charter right
- Charter does not exclude grant of legal aid to legal persons

Held

- Legal persons may rely on Art 47 EUCFR
- Legal aid granted pursuant to that principle may cover, inter alia, dispensation from advance payment of costs of proceedings and/or assistance of lawyer
- For national court to ascertain whether conditions for granting legal aid breach Art 47 EUCFR (must review legitimacy of aim pursued and proportionality of national rules)