

# Relying on the EU Charter before national courts

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Edinburgh, ERA, 3 June 2013

# Overview

- Status of Charter before national courts – who must have regard to it, and what weight does it carry?
- When does the Charter apply?
- Who can the Charter be relied upon against?
- What are the limitations set down by the Charter on the application of its provisions?
- Effect of “opt-outs”?

# Status of the Charter from national courts' perspective

- **“The same legal value”** as the Treaties (Art 6.1 TEU, Lisbon amendment) – SO
  - **Interpretative tool** for EU/national law within the scope of EU law
    - Including to justify MS actions that might otherwise infringe EU law (eg *Omega*)

AND

- **Ground of invalidity** of all EU actions and all MS actions within scope of EU law
  - Whether MS is interpreting / applying EU law...
  - Or even restricting EU rights (eg *Carpenter*, *Ruiz Zambrano*)

# Status of the Charter from national courts' perspective

- A minimum level of protection (Art 53, Charter)
  - Case C-399/11 *Melloni*, 26 February 2013
  - Case C-617/10 *Fransson*, 26 February 2013
  - Case C-534/11 *Arslan*, 30 May 2013

# Status of the Charter from national courts' perspective

- Who is bound by it?
  - All national courts and tribunals
  - Any public authority applying EU law
  - In certain cases: private parties (“horizontal” direct effect issue)
- **If matter falls within scope of EU law**

# Scope of application of the Charter

- Article 51(1) EUCFR
  - **Issue (1):**
    - Meaning of “implementing” Union law?
      - National authorities acting as agents of EU or implementing e.g. Directive (see, e.g., *Wachauf*, *DEB*, *NS*)...
- AND**
- National authorities derogating from right granted by EU law, e.g., free movement right (see, e.g., *ERT*, *Carpenter*, *Schmidberger*, *Omega*, *Ruiz-Zambrano*...)

# Scope of application of the Charter

- **NOT** if matter has no connection with EU law or fall outside material scope of EU law
  - Eg C-328/04 *Vajnai*
  - Eg C-40/11 *Iida*
  - Eg if agreement is made outside of EU Treaties – *Pringle*, November 2012
  - NB Art. 51(2) EUCFR

# Scope of application of the Charter

- **Issue (2):**
  - Does the Charter apply as against private parties?
  - **YES** if the right at issue is judged by the CJEU to represent a general principle of EU law which has “horizontal” direct effect
    - Case-by-case basis
    - Eg *Mangold*, *Kücüdeveci*....

# Further controversial issues for national courts

- Does the Charter simply re-state pre-existing rights?
  - Preamble
  - Art 52(2) EUCFR, Art 52(3) EUCFR
- Does the Charter (esp Title VII) change the scope of pre-existing rights, as conferred by general principles of EU law (Art. 6(3) TEU)?
  - Viz Art 53, *Melloni*
  - Charter as a **minimum level of protection**
  - **Doesn't prevent CJEU recognising new general principles of fundamental rights in normal way** (Art. 6(3) TEU)

# Further controversial issues for national courts

- What status do the Charter’s “explanations” have?
  - Art 52(7), EUCFR; Art. 6(1) TEU
- What relevance do national sources of human rights have?
  - Art 52(4), Art 52(6) EUCFR
  - Viz frequent reference to “national law and practices” (e.g., workers’ rights, same-sex marriage debate (Art 9 EUCFR))
- What is the difference between “rights” and “principles” under the Charter?
  - Art. 52(5) EUCFR; Art. 6(1) TEU; Charter Preamble

# Further controversial issues for national courts

- Implications of UK/Polish “opt-out”
  - Art 1 “The Charter **does not extend** the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.”
  - Art 2 “To the extent that a provision of the Charter refers to **national laws and practices**, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom.”
- Implications of UK/Ireland Protocol on area of FSJ
  - Is measure-by-measure participation within the “scope” of EU law?

# The Charter in practice: key cases to date before the CJEU

- Strong role in reviewing validity of EU acts
  - Eg C-236/09 *Test-Achats* – exemption allowing pro-female discrimination in 2004 Insurance Directive invalid
- Has provided evidence for categorisation as “general principles” of EU law
  - Far-reaching implications of this viz. Directives
  - Eg *Kücüdeveci* C-555/07; *Viking* C-438/05

# The Charter in practice: key cases to date before the CJEU

- Has provided support for expanding scope of EU citizenship law
  - Central issue: Is the “genuine enjoyment” of citizenship rights respected? *Ruiz Zambrano*, *Dereci*, *McCarthy*
- Even where “national laws” caveat applies, CJEU has used Charter to strengthen pro-rights interpretation where a Directive applies
  - *ANGED* C-78/11: right to paid annual leave means sick days while on annual leave can be claimed back

# The Charter in practice: key cases to date before the CJEU

- NB Use of expedited procedure in a variety of cases (Arts 105, 107 Rules of Procedure CJEU)
- Charter has been applied in wide variety of circumstances
  - Eg asylum – C-277/11 *MM*
  - Eg family law – C-400/10 *McB* (urgent FSJ procedure – 2 months from CJEU receipt of order to judgment)
    - Art 7 EUCFR
  - Eg companies' rights – C-12/11 *McDonogh v Ryanair*
    - Arts 16, 17 Charter vs Art 38 (consumer protection)

# Conclusions

- Charter
  - Adds weight to rights previously recognised by CJEU
  - For some rights: expands substantive scope of EU fundamental rights law
  - Major restriction from national courts' perspective: Art 51 EUCFR