Respect for Fundamental Rights in the EU – A broad introduction with a special focus on the EUCFR –

Killian O'Brien, Academy of European Law (ERA), Trier

Outline

1. Situation pre-Lisbon Treaty

1.1 No written Bill of Rights in the 1957 EEC Treaty

1.2 The ECJ's decisive lead in the 1960/1970s

1.3 Codification of the ECJ's case law in the 1990s

2. Situation post-Lisbon Treaty

2.1 EU Charter of Fundamental Rights

2.2 EU Accession to ECHR

2.3 Fundamental rigths as general principles of law

3. EU system of remedies

3.1 Challenging **EU measures** on fundamental rights grounds: The 2 main avenues for natural and legal persons

- Example of annulment action where applicant successfully challenged legality of EU legislation on human rights grounds

- Examples of references for a PR where compatibility of EU legislative provisions with CFR has been challenged

- Examples of references for a PR where EU legislative provisions have been interpreted in the light of CFR

3.2 Challenging **national measures** on EU fundamental rights grounds

1. Situation pre-Lisbon
1. 1 No EU Bill of Rights

- EEC Treaty (1957): No specific provisions on the protection of fundamental rights

- Why? See creation of the CoE (1949)

3

1.2 The ECJ's Decisive Lead

- Case 29/69: "… the provision at issue contains nothing capable of prejudicing the **fundamental human rights enshrined in the general principles of Community law** and protected by the Court."

- Case 11/70: "**Respect for fundamental rights forms an integral part of the general principles of law** protected by the Court"

4

1.3 CODIFICATION OF ECJ'S CASE LAW IN 1992/1997: ART. 6 TEU [UNTIL LISBON]

- 1. The Union is founded on the principles of liberty, democracy, respect for **human rights and fundamental freedoms**, and the rule of law, principles which are common to the MS.

- 2. The Union shall respect **fundamental rights**, as guaranteed by [the ECHR] and as they result from the constitutional traditions common to the MS, AS GENERAL PRINCIPLES OF COMMUNITY LAW. …

Art. 6(1) TEU

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.

2.2 EU Accession to the ECHR

Art. 6(2) TEU

- The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

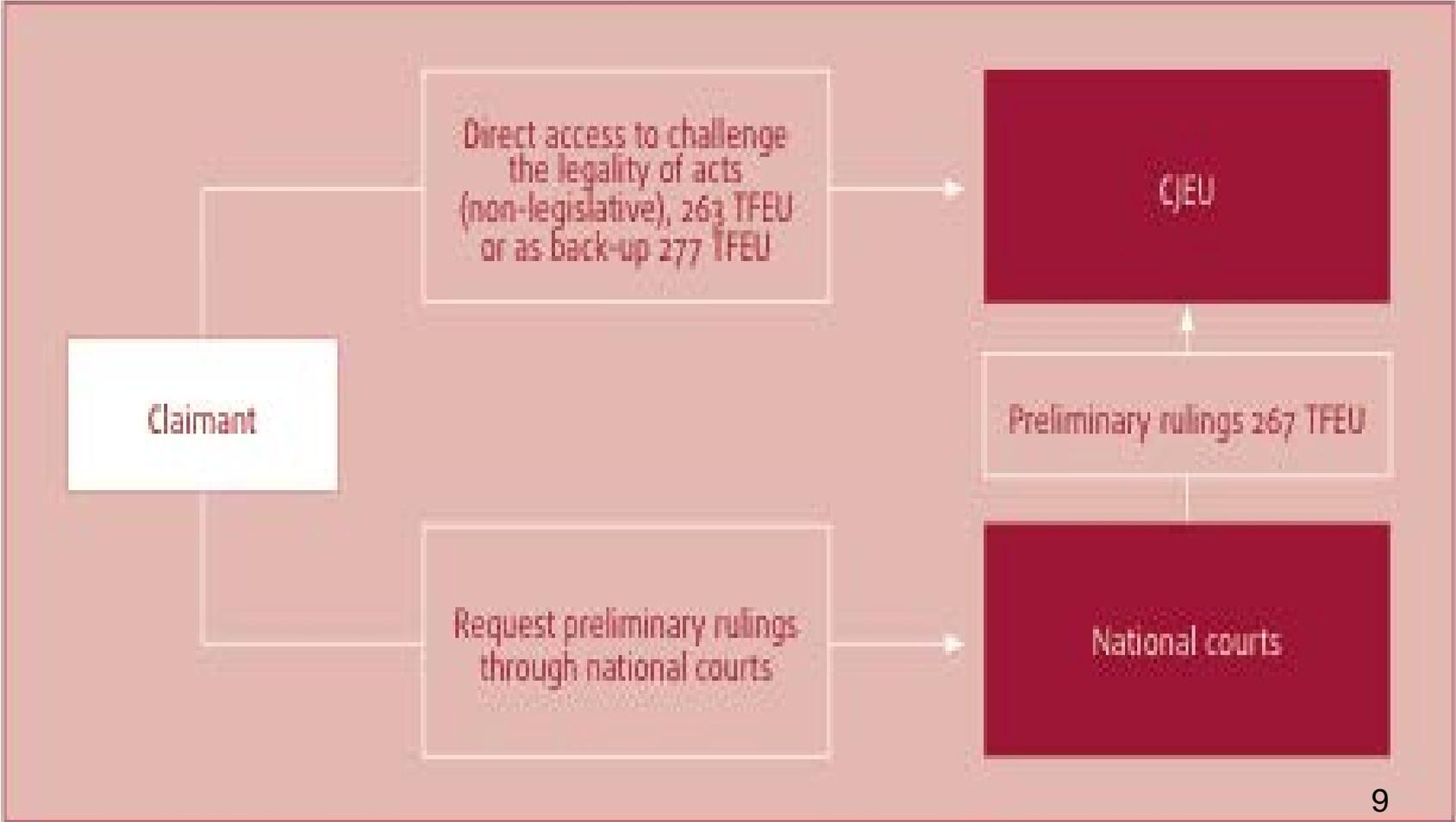- Such accession shall not affect the Union's competences as defined in the Treaties.

7

Art. 6(3) TEU

- **Fundamental rights**, as guaranteed by the [ECHR] and as they result from the constitutional traditions common to the Member States, **shall constitute general principles of the Union's law.**

3.1 Challenging **EU measures** on EU fundamental rights grounds: The 2 main avenues for natural and legal persons

9

Example of **annulment action** where applicant successfully challenged **legality of EU legislation** on HRts grounds: C-402/05 P *Kadi* [2008]

Yassin Kadi on the balcony of his Jeddah apartment

➤ Key principle recalled by ECJ:

The review by the EU courts of the validity of any EU measure in the light of EU fundamental rights must be considered to be the expression of a constitutional guarantee stemming from the EU Treaties

➤ Held: Applicant's **rights of defence** and **right to effective judicial review** were violated & freezing of his funds constitutes an unjustified restriction of applicant's **right to property**

10

Examples of **references for a PR** where **compatibility** of EU legislation with CFR has been challenged

➢ Case C-236/09 *Association belge des Consommateurs* [2011]: Article 5(2) of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services **is incompatible with Articles 21 CFR (non-discrimination) and 23 CFR (equality between women and men)**

➢ Case C-399/11 *Melloni*: Is article 4 of Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States **compatible with Article 47 CFR (right to a fair trial) and Article 48(2) CFR (respect for the rights of defense)?**

➢ **Case C-411/10 *N. S.* [2011]:** discretionary power conferred on the MS by Article 3(2) of Regulation No 343/2003 establishing the criteria and mechanisms for determining the MS responsible for examining an asylum application lodged in one of the MS by a TCN <u>*must be interpreted in a manner which ensures respect with the fundamental rights and principles recognised by the Charter*</u>, and in particular **Art. 4 CFR** (inhuman or degrading treatment)

➢ **Case C-179/11 *Cimade and GISTI* [2012]:** Provisions of Directive 2003/9, which lays down inter alia the minimum standards concerning the material conditions for the reception of asylum seekers, <u>*must be interpreted in a manner which ensures full respect*</u> for human dignity (**Art. 1 CFR**) and full observance of the right to asylum guaranteed by **Art. 18 CFR**

12

3 Main Scenarios:

(1) National measures directly implement/apply EU law

(2) National measures limit any of the rights contained in the EU Treaties/EU legislation

(3) National rules/disputes whose subject-matter is 'simply' governed by substantive provisions of EU law can also be challenged

13