

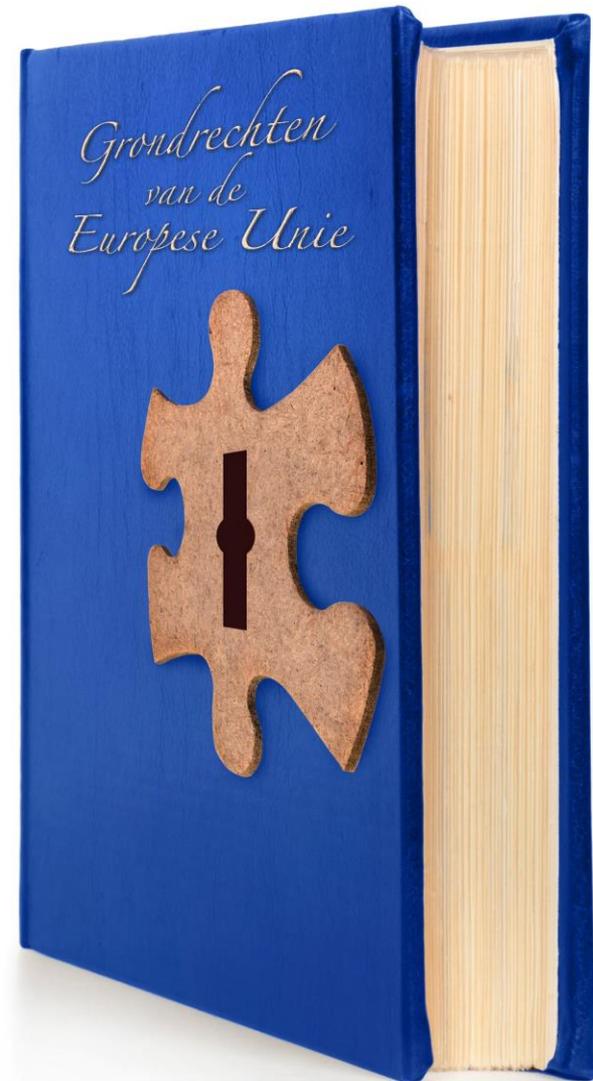
The Scope of Application of the EU Charter in national legal orders



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Planning

- I. Introduction
- II. Theoretical framework scope of application
- III. Practising with cases

Part I – Introduction

Sources of EU Fundamental Rights

➤ **General principles of
Union law**

Art. 6-3 TEU

➤ **EU-Charter (CFR)**

Art. 6 -1 TEU



Part II

Theoretical framework scope of application Union fundamental rights



Part II – Theoretical framework scope of application

When does the Charter apply?

- Preliminary question: does the Charter apply?
- The starting point is Article 51-1 EU Charter.
- Difference with the ECHR

Part II – Theoretical framework scope of application

Article 51-1 of the Charter

Article 51, par 1, EU Charter

“Field of application

1. The provisions of this Charter are addressed to the **institutions, bodies, offices and agencies of the Union** (...) and to the **Member States** only when they are implementing Union law. (...)”

Part II – Theoretical framework scope of application

Scope of application Charter and general principles = equal

- Charter
- EU fundamental rights as general principles of Union law
- Criterion = the implementation of Union law

Part II – Theoretical framework scope of application

Article 51-implementation is a broad concept

Clarification regarding Article 51 — scope of application

The purpose of Article 51 is to delimit the scope of application of the Charter (...) As far as the Member States are concerned, it is clear from the jurisprudence of the Court that the obligation to respect Union fundamental rights only applies to the Member States when they are acting **within the scope of application** of Union law (...)

Part II – Theoretical framework scope of application

Case – Annual leave

An EU Directive contains the following obligation:

“Annual leave

Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.”

Part II – Theoretical framework scope of application

Case – Annual leave (part 1)

- Employees of a hypothetical public sector employer, “Workcare”, are entitled to four weeks of vacation.
- Workcare decides that its employees are required to have one week financial compensation en lieu of taking off vacation days.
- This is due to structural lack of staff.
- National law allows for such a measure.
- Workcare employees posit that these measures, as well as the underlying national legal provision, violates Article 7 of the Charter (respect for family life).

Part II – Theoretical framework scope of application

Case – Annual leave (part 2)

- One of Workcare's employees goes to labour court and demands the right to use the entirety of his vacation days.
- He has to pay court fees.
- The Directive does not contain any provision on court fees.
- The obligation to pay court fees follows from national procedural law; the national law at issue applies in general and was not designed to implement the Directive.
- Unfortunately, the employee does not fulfil the requirements for exemption from court fees.
- He does not agree and posits that the requirements for exemption violate the principle of non-discrimination (Article 21 of the Charter)

Part II – Theoretical framework scope of application

Case- VAT part 1

- The Blackpoint corporation is involved in VAT fraud.
- VAT is governed by EU VAT Directives.
- The fraud is discovered.
- The tax authorities order repayment of the V.A.T.
- Blackpoint does not agree and goes to court. In the procedure,
- Blackpoint argues that its right to a fair hearing was violated and it invokes the EU-mandated right to a fair hearing.

Part II – Theoretical framework scope of application

Case- VAT part 2

- On the basis of national administrative law, the tax authority imposes administrative fines.
- Blackpoint invokes the EU legal right to a fair hearing.

Part II – Theoretical framework scope of application

Case- VAT part 3

- On the basis of national criminal law, the director of Blackpoint is prosecuted for VAT fraud.
- Criminal law is within purview of Member State powers.

Part II – Theoretical framework scope of application

Case – Speeding

- Mr. Sanchez is ticketed for speeding.
- He has Spanish nationality.
- He has used free movement and lives and works in the Netherlands.
- Because he does not agree with the ticket, he brings the case before court.

Part II – Theoretical framework scope of application

How do I determine if a situation constitutes Article 51 implementation?

- Step 1:

Is there a connection to EU law?

- Step 2:

Is this connection sufficiently concrete?

Part II – Theoretical framework scope of application

Agent situation

FRA handbook p.40

- Member State acts as an “agent” or “representative” of the EU
- If it acts on behalf of the Union.
- All authorities and the judiciary of the Member States can act as such.

Part II – Theoretical framework scope of application

Authorisation situation

(p. 61 FRA handbook)

- Member State is subject of law
- Member States need to rely on authorisation under European Union
- EU green light is needed



Part III

Cases

- Wide range of situations & abstract
- Let's get going!

