

Advanced Training in EU  
Law for Court Coordinators

# **PRELIMINARY RULING PROCEDURE, FUNDAMENTAL RIGHTS AND EU CITIZENSHIP**

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## **FUNDAMENTAL/HUMAN RIGHTS (Part 2)**

- **Recent judgments of the CJEU based on the EU Charter of Fundamental Rights and on the European Convention of Human Rights: how the Court grounds its judgments on human and fundamental rights**

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## FUNDAMENTAL/HUMAN RIGHTS (Part 2)

### The Route to the Charter

- ▶ The protection of fundamental/human rights in the founding treaties of the European Communities

No rules in the founding treaties in 1957/few common market related provisions contained in the TEC- France and the ratification of ECHR –the protection of human rights in the “Constitutions” of TEC MSs

- ▶ The case law’s evolution of the protection of human rights

initial rigidity of the Court to protect the rights belonging to the Constitutions of MSs

the decisions of German and Italian Constitutional Courts and the revirement of the CJEU



## FUNDAMENTAL/HUMAN RIGHTS (Part 2)

### The Route to the Charter

- ▶ The Decision of the Council in 1999

- ▶ The approval from the Council October 2000

- ▶ The joint proclamation of December 2000

- ▶ The adjustments and the new joint proclamation of December 2007

## FUNDAMENTAL/HUMAN RIGHTS (Part 2)

### The Charter now

- ▶ Fundamental/Human rights in the current Treaty
- ▶ Article 6 of the TEU
  - para1 Charter of Fundamental Rights of the European Union:
    - same values of the Treaties
    - competences of the Union as defined in the Treaties

## FUNDAMENTAL/HUMAN RIGHTS (Part 2)

### The Charter of Fundamental Rights of the European Union

- ▶ The content of the Charter
- ▶ The Charter's references to the European Convention on Human Rights :
  - In the The Preamble
  - In the final Title VII "General Provisions Governing the Interpretation and Application of the Charter": art 52 (through the filter of art. 51) and art 53.
- ▶ Article 51 -Field of application
- ▶ Article 52 - Scope and interpretation of rights and principles
  - Its application and regime
  - Paragraph 3: the concept of minimum standard of the ECHR and the explanations to the Charter - the list of correspondences
- ▶ And the related provision of Article 53- Level of protection

## FUNDAMENTAL/HUMAN RIGHTS (Part 2)

### The Charter of Fundamental Rights of the European Union

- ▀ Rights/Principles
- ▀ The difference in the theory
- ▀ The consequences in practice

The choice among the remedies provided by the CJEU, the ECtHR the national Constitutional Courts

### Points of contact and reciprocal influence of the two Charters: how the relationship operates in practice between the two Courts. –

- ▀ How the European Court of Justice and related caselaw benefits from the ECtHR
- ▀ Vice versa: How the ECtHR and its interpretative jurisprudence is influenced by the Charter (brief remarks)

## How the European Court of Justice and related caselaw benefits from the ECtHR

- To confirm CJEU interpretation of the Charter  
(Menci C-524/15 ; Art. 50 of the Charter in the light of art 4 of Protocol 7 of the ECHR)
- Making direct reference to the ECHR and the relevant jurisprudence through art 6 TEU and the notion of general principles in case of gaps in the legal system of the Union  
(G4S C-157/15 art 9 of ECHR ; Bagnououi, C-188/15 art. 9 of ECHR as well.)

## How the European Court of Justice and related caselaw benefits from the ECtHR

- Identifying the minimum and sufficient standard of protection of a right enunciated by the Charter, pursuant to art. 52.3 cfr ( AH e a. C-377/18 C-377/18 presumption of innocence art 48 of the Charter, art. 6 para 2 and 3 of the ECHR)
- providing the national judge with criteria for balancing two conflicting rights (Spiegel online, C-516/17 art. 11 of the Charter - freedom of expression and information - and art. 17, para 2 of the charter - protection of intellectual property rights )



**(brief remarks) Vice versa: How the ECtHR and its interpretative jurisprudence is influenced by the Charter**

- Parties of the CoE and EU membership
- The use of art. 31.3c of Vienna Convention on the Law of treaties



**A brief analysis of some judgement of the CJEU under the lens of the above said**

- the «Aranyosy and Căldăraru» Judgment.  
Joined Cases C-404/15 and C-659/15 PPU
- the «Privacy International» Judgment.  
Case C-623/17
- the “TK v Asociația de Proprietari bloc M5A- Scara A Judgment”.  
Case C-708/18



**A brief analysis of some judgement of the CJEU under the lens of the above said**

- the «Aranyosy and Căldăraru» Judgment. Joined Cases C-404/15 and C-659/15 PPU
- the framework
- the legal context
  - ECHR
  - Charter
- the case under the umbrella of the EU LAW
- the exam of the national provisions in the light of the EU Law and of the Charter and Convention



**A brief analysis of some judgement of the CJEU under the lens of the above said**

- the «Aranyosy and Căldăraru» Judgment. Joined Cases C-404/15 and C-659/15 PPU (follows)

**the conclusions of the Court**



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