

Sources of fundamental rights

1./ national constitutions

2./ ECHR

3./ (Other) international law

4./ EU law

- Fundamental rights as basic principles

case 29/69, Stauder vs City of Ulm: „fundamental human rights are enshrined in the general principles of Community law and protected by the Court“

case 11/70, 1970, Internationale Handelsgesellschaft: the „respect for fundamental rights forms an integral part of the general principles of law protected by the ECJ“ and „the protection of such rights is inspired by the constitutional traditions common to the Member States“

case 4/73, 1974, Nold: „....similarly international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law“

cases 46/87 and 227/88, Hoechst: „ECHR as an instrument having „special relevance“ for the determination and interpretation of fundamental rights as general principles of EC law“

case ERT, C-260/89, “ERT-Doctrine”

(see e.g. case Sabou, C-276/12)

- TEU, Article 6:

1. 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. 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.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Case Kamberaj, C-571/10

- Fundamental rights' Charta (FRC)

Art. 6 para 1 TEU

Article 52 FRC („Scope of guaranteed rights“)

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Art. 51 FRC (“scope”)

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Case Akerberg Fransson C-617/10

Case Siragusa, C-206/13

Case Pfleger, C-390/12

Case Paoletti and others, C-218/15

Case Sas, Garavaldi, C-177/17, 178/17