

## **The Charter in the Parallelism of Fundamental Rights Regimes**

### **§ 1 Introduction**

- I. The concepts of "human rights" and "fundamental rights"
- II. The plurality of human rights protection systems
  - 1) The primary responsibility of the state for the effective protection of human rights
  - 2) The reasons for the existence of other human rights protection systems
    - a) The recurring insufficiency of the national protection of human rights and the necessity of guarantees from outside the State
    - b) The necessity of particular fundamental rights regimes for supranational powers
    - c) Geo-regional fundamental rights regimes as expressions of identity of civilisations
  - 3) General aspects of the parallelism of human rights protection systems
    - a) Intensified protection through cumulative requirements
    - b) Parallel operation without correlation or interference
    - c) Mutual influence of interpretations

### **§ 2 The existing human rights protection systems in Europe**

- I. The protection of human rights in Europe through global instruments
- II. The protection of human rights at the pan-European level
  - 1) Introduction: two levels of geo-regional law and institutions in Europe
  - 2) Pan-European treaties on human rights
  - 3) The pan-European human rights protection system as a complement not alternative to the national protection systems
- III. The present protection of human rights at the EU level
  - 1) Introduction: protection confined to EU-related affairs
  - 2) The basis: art. 6(1) and 6(2) TEU
  - 3) Some fundamental rights and guarantees with similar effects in the EC Treaty
  - 4) Fundamental rights as general principles of Union law
  - 5) Evaluation: a potentially effective human rights protection system with actual deficiencies and small power of integration
  - 6) A special problem: The European Union and the European Convention on Human Rights
- IV. The protection of human rights at the national level
- V. The protection of human rights at a sub-national level

### **§ 3 The Charter as a specific catalogue of fundamental rights for the European organisation of integration**

- I. The long struggle for a specific catalogue of fundamental rights
- II. The reasons for a specific catalogue of fundamental rights
- III. The genesis of the Charter
- IV. The contents of the Charter - a first glance

#### **§ 4 The legal significance of the Charter - today and tomorrow**

- I. The field of application of the Charter
- II. The binding effect of the Charter
  - 1) The binding effect according to the prevailing law and according to the Treaty of Nice
    - a) The Charter as a political declaration
    - b) The Charter as a source of inspiration for the fundamental rights jurisprudence of the European Court of Justice?
      - aa) The political decision not to insert a reference to the Charter into art. 6(2) TEU and its implications
      - bb) The demand for application of the Charter in the scientific community
      - cc) Decisions of the Court of First Instance and opinions of Advocate Generals referring to the Charter
    - c) The Charter as an aid to interpretation of (post-charter) secondary law
  - 2) The binding effect after a future inclusion in the founding treaties or a European constitution

#### **§ 5 The case of divergence between the Charter and other fundamental rights regimes**

- I. Conflicts between the Charter and other fundamental rights regimes?
- II. Conflicts between acts of secondary law, which comply with the Charter, and other fundamental rights regimes

#### **Excerpt from art. 6 of the Treaty on European Union**

- (1) The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles that are common to the Member States.
- (2) The Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

For more informations on these lessons (jurisprudence, bibliography, links etc.) see special website: [www.jura.uni-goettingen.de/schmitz/Lehre/EPLC-Academy\\_2002.htm](http://www.jura.uni-goettingen.de/schmitz/Lehre/EPLC-Academy_2002.htm).

## **General Aspects of the Protection of Human Rights as guaranteed in the Charter**

### **§ 1 The general orientation of the Charter**

- I. A fundamental rights regime based on the (west-) European canon of fundamental values and ideas
- II. A cautious reorientation within the European canon of fundamental values and ideas
- III. Elements of confusion
  - 1) The Charter and the religious heritage
  - 2) A distinction between human beings and persons?

### **§ 2 Innovative approaches of the Charter**

- I. The classification of the fundamental rights
- II. Precautions against threats emanating from private activities
- III. Further examples

### **§ 3 A comprehensive or incomplete guaranty of freedom?**

### **§ 4 The systematics of the fundamental rights limits**

- I. The significance of an elaborated system of distinctive fundamental rights limits
- II. The inadequate system of fundamental rights limits in the Charter
  - 1) An undifferentiated general limitation clause (art. 52[1])
    - a) Significance and scope of application of art. 52(1)
    - b) The requirements of art. 52(1) for restrictions of fundamental rights
  - 2) A partial transfer of the antiquated limits from the ECHR (art. 52[3])
    - a) The transfer of limits via art. 52(3)
    - b) Critique of the transfer of limits
    - c) Special problems of the application of art. 52(3)

### **§ 5 Third party effect and duties of protection**

- I. Introduction
- II. Fundamental prohibitions and positive obligations with direct binding effect
- III. A transfer of the duties of protection doctrine from German constitutional law?
- IV. Duties of protection and principle of subsidiarity

## **§ 6 The legal essence of the social rights**

- I. No programmatic principles but individual rights
- II. Some rights with third party effect
- III. Moderate positive rights
- IV. Reduced legal essence due to dynamic references to other sources

## **§ 7 Provisions on the objectives of the Union disguised as fundamental rights**

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**A Selection of Problems  
concerning individual Fundamental Rights in the Charter**

- § 1 Restrictability of human dignity? (art. 1)**
- § 2 The scope of the prohibition of capital punishment (Art. 2[2])**
- § 3 A fundamental right to the recognition of same-sex marriage? (art. 9)**
- § 4 The limits of the freedom of the arts and sciences (art. 13)**
- § 5 The freedom of the media as a particular fundamental right or as a part of the freedom of expression? (art. 11)**
- § 6 The legal essence of the principle of respect for cultural, religious and linguistic diversity (art. 22)**

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