

§ 3 Fundamental rights in the European Union

I. Why the European Union needs its own fundamental rights regime

- the EU as a non-state but state-like supranational organisation of integration that exercises on a large scale public power

II. The Charter of Fundamental Rights of the European Union

- binding law since 2009; before, the f.r. were based on ECJ jurisprudence

1) The legal significance of the Charter

- part of EU primary law (cf. art. 6(1) EU Treaty), directly applicable and enjoying primacy
- a specific f.r. regime for the EU, not a competitor to the European human rights law
- binding the EU institutions; *member states only bound when implementing or executing EU law* or interfering with the economic fundamental freedoms

2) The Charter as one of the most modern fundamental rights catalogues in the world

- drafted by a pluralistic Convention in a broad, multi-national public discourse with broad participation of the civil society
- rights modelled on the ECHR and other h.r. treaties, advanced national constitutions and ECJ jurisprudence, taking into account the newest developments in human rights doctrine and politics
- distinct *anti-neoliberal approach* (social rights, horizontal effect, restrictions on business activities)

3) Some strong and weak points of the Charter

- clear structure based on an innovative (but not faultless) *classification of the rights*
- modern, contemporary and precise wording
- *many innovations*: e.g. fundamental restrictions of biomedicine (art. 3(2)), prohibition of trafficking in human beings (art. 5(3)), freedom to conduct a business (art. 16), cultural, religious and linguistic diversity (art. 22), rights of the child (art. 24), of the elderly (art. 25) and of persons with disabilities (art. 26)
- no general freedom of action
- a *poorly conceived system of fundamental rights limits* (art. 52) with an undifferentiated general limitation clause for most rights (sect. 1) and a transfer of the archaic limits from the ECHR to corresponding Charter rights (sect. 3)

III. Complementing other fundamental rights norms in European Union law

- f.r. directly guaranteed in the Treaties (art. 18, 157 FEU Treaty)
- possible complementary f.r. as general principles of Union law (art. 6(3) EU Treaty)

IV. The future accession of the European Union to the European Convention

- required by art. 6(2) EU Treaty; however, a first attempt failed because ECJ considered draft accession agreement incompatible with autonomy of EU law and ECJ's monopoly of interpreting it (ECJ, opinion 2/13)