

Constitution and Constitutional Principles in the EU



Protection of Fundamental Rights

Protection – national level

- Catalogue of rights – in the constitution or at the same rank (declaration), & other sources (ratified HR Treaties, acts of parliament)
- Function: posing boundaries in the exercise of political power (or ‘Drittwirkung’?)
- State: respects & protects (individually and institutionally)
- Institutions: courts of law, constitutional courts, ombudsman

Protection – international level

- Human rights protection – terminology
- Implications: world wars, and global challenges (e.g. armed conflicts, child soldiers, terrorism, data-protection, Internet, environment, racism and other fields of discrimination)
- United Nations
 - the UN Covenant on Civil and Political Rights 1966
 - the Covenant on Economic Social and Cultural Rights 1966
 - the Convention on the Prevention and Punishment of the Crime of Genocide 1948
 - the Convention on the Elimination of All Forms of Racial Discrimination 1966
 - the Convention on Elimination of all Forms of Discrimination against Women 1979
 - the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment 1984
 - the UN Convention on the Rights of the Child 1989
- Council of Europe – ECHR – Strasbourg Court

EU & fundamental rights

- Why should EC/EU protect fundamental rights?
- Problem of the conflicts of national obligations
- No boundaries posed in EC-legislation
- Supremacy of EC law

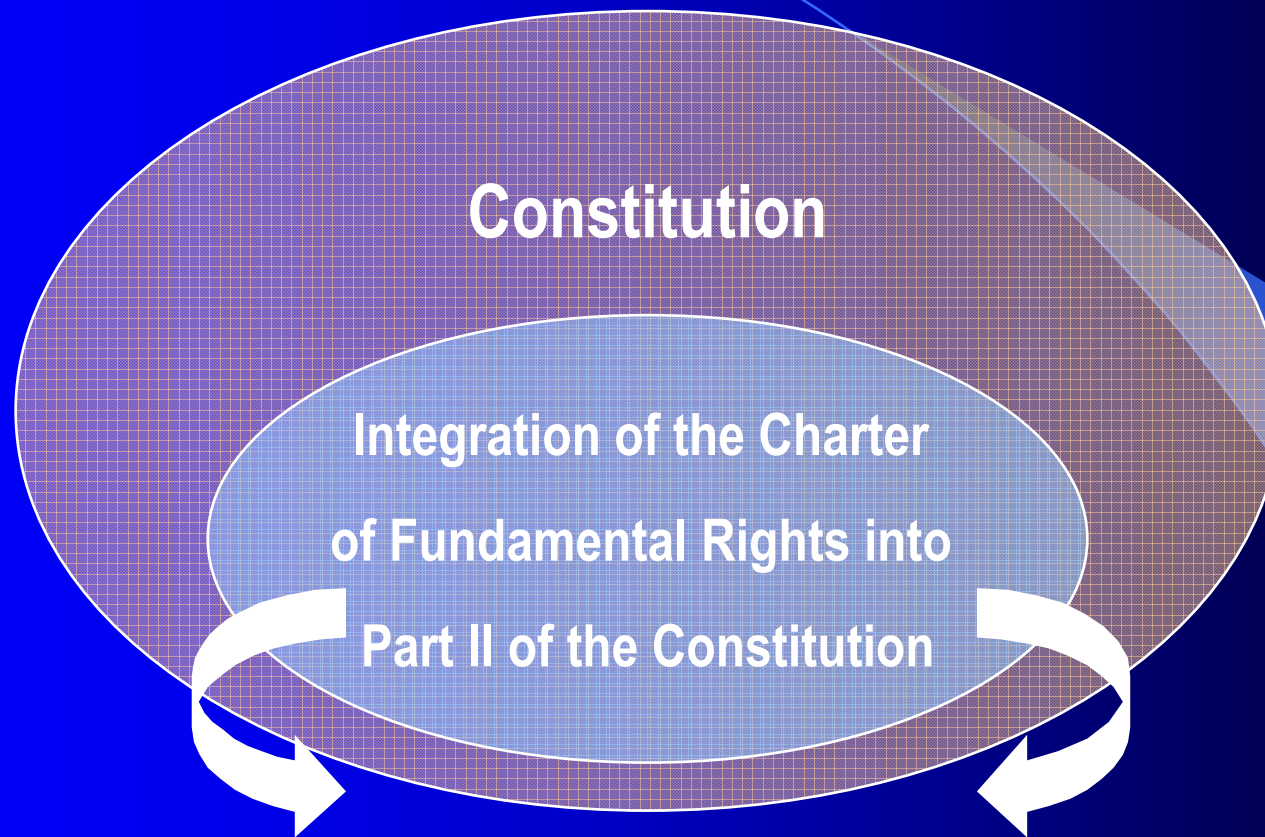
The role of ECJ

- Stauder case 1969 (general principle of EC-law)
- Internationale Handelsgesellschaft 1970 (member states' constitutional traditions)
- Nold II case 1974 (international HR-obligations bounding the MS)
- Member States: „agency” and „ERT” type review (Wachauf case – 1989, ERT case – 1991)

Normative backgrounds

- TEU Art. 6-7
- Nice: Charter of Fundamental Rights
- European Constitution
 - Values (dignity, freedom, equality, solidarity, justice, citizenship)
 - Defines relations: Member States' and ECHR's standards
- Treaty of Lisbon
- Challenges
 - Legal status of the Charter
 - Accession of the EU to the ECHR
 - Strasbourg & Luxembourg Courts

CHARTER OF FUNDAMENTAL RIGHTS IN THE EU CONSTITUTION



LEGALLY BINDING -

Reform Treaty gives it to the separate document

Treaty of Lisbon [Art. 2]

- The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Lisbon Treaty [Art. 6]

- 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 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.
- 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.

Other Articles

- Art. 7 of TEU (guarantee-norm)
- Art. 16 of TFEU (data-protection)
- Art. 17 of TFEU (churches...)
- Art. 16 TFEU (non-discrimination)
- Art. 20-24 TFEU (citizenship)

The Charter

- European Council in Cologne (1999)
- Convent of Fundamental Rights (2000)
- Nice Summit on 7th December 2000
- Groups of rights (6 values)
- Binding force and legal effect
- [EU Agency for Fundamental Rights (FRA)]

Problems of the actual system

Yusuf & Kadi cases

- UN Security Council decision – lists of Sanction Committee – financial sanctions against individuals – no legal remedy
- EC regulation (instead of MS)
- Applicants searching remedy at ECJ (EC regulation)
- CFI: refused – no jurisdiction to review international law and instruments based on that (2005)
- ECJ: effective judicial protection, each EC legal acts have to take into consideration the respect of fundamental rights and the Charter (2008)