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# HUMAN RIGHTS PROTECTION AT INTERNATIONAL, SUPRANATIONAL AND NATIONAL LEVEL



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# The Charter of Fundamental Rights

- Why a FR Charter for the EU?
- HR protection before adopting the Charter
- The evolution of the Charter
- The Charter as a HR document - structure, legal binding force
- Significance, interpretation and application

# Why a FR Charter for the EU?

- EU: Economic cooperation → Political integration
- Expansion of competences
- Economic and technical development
- No limitation by HR

**HUMAN RIGHTS DEFICIT**

# HR protection before adopting the Charter

## Development of the ECJ case-law

Common  
constitutional  
standards of  
MSs

ECHR

# HR protection before adopting the Charter

## Common constitutional standards of MSs

- Stauder: *FR of persons formed part of the general principles of Community law, respect for which shall be guaranteed by the Court*
- Internationale Handelsgesellschaft: *FR formulated by national law could not affect the validity of Community law BUT! examination of possibly existing analogous principles*

# HR protection before adopting the Charter

- Hauer: (decision on the maximum standard)  
*FR indeed form an integral part of the general principles of the law (inspiration is drawn from the constitutional traditions and international treaties)*  
**BUT!** *special criteria stemming from the legislation/constitutional law of a MS would jeopardize the unity of the common market and the cohesion of the Community*

# HR protection before adopting the Charter

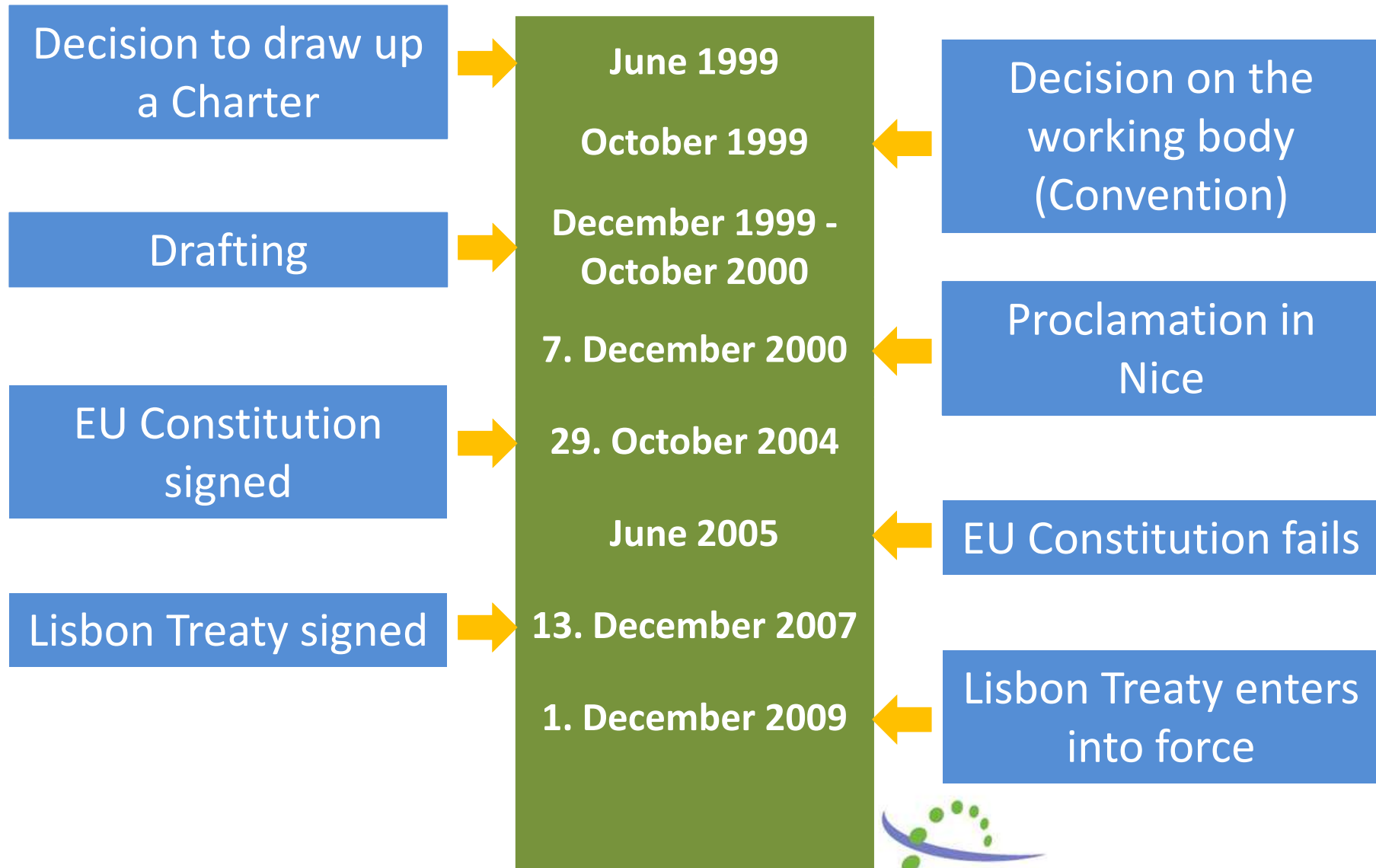
## ECHR

-Nold: *regard to international treaties of which the MSs are signatories*

*“the Court [...] cannot therefore uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those States”*

-Rutili: *the Court expressly and specifically referred to the ECHR in the range of international treaties*

# Evolution of the Charter



# Evolution of the Charter

## The drafting CONVENTION

15 representatives of  
the Heads of State and  
Government

1 representative of the  
Commission

16 representatives of  
the EP

30 representatives of  
the natl. parliaments

ECJ

Deputy Secretary  
General of the CoE

member of the  
ECtHR

(as observers)

EESC

CoR

European  
ombudsman

accession countries  
(to give their views  
)

# The Charter as a HR document

- Preamble + VII Titles (54 Articles)
  - I. Dignity
  - II. Freedoms
  - III. Equality
  - IV. Solidarity
  - V. Citizens' rights
  - VI. Justice
  - VII. General provisions governing the interpretation and application of the charter

# The Charter as a HR document

- Legal binding force:
  - Does not form part of the Treaties
  - Has been used as a „soft law” document in the practice of the EP, Commission, Court of First Instance (General Court), Advocates-General – later the ECJ and the ECtHR(!)
  - Was not legally binding until the Lisbon Treaty
  - Article 6 (1) TEU gives the Charter the force of law (since the Lisbon Treaty)

# Significance, interpretation and application

- Does not establish new rights – consolidates and collects the rights stemming from existing sources
- Represents the “state of the art” concerning HR
- Primary aim: to limit the Union’s power

# Significance, interpretation and application

## Field of application (Art. 51)

- All Union institutions and bodies (1)
- MS – when acting in the field of application of Union law (1)

Wachauf: *margin of appreciation for MSs – but regulation shall be applied consistent with the protection of FR*

# Significance, interpretation and application

ERT: *justification of rules which obstruct the exercise basic freedoms must be interpreted in the light of FR*

Karlsson (2000): *“... it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they are implementing Community rules...”*

## Significance, interpretation and application

- Does not extend the powers or tasks of the Union defined by the Treaties (2)

Grant: *respect for FR which form an integral part of the general principles of Community law but cannot have the effect of extending the scope of provisions beyond the competences of the Community*

- Opt-out Protocols of the Czech Republic, Poland and the United Kingdom

# Significance, interpretation and application

## Scope and interpretation (Art. 52)

- Restriction of rights (1)
- Does not change the system of rights ensured by the EC Treaty adopted by the Treaties (2)
- Harmony between the Charter and the ECHR – protection of the Charter cannot in any case be lower than guaranteed by the ECHR (3)

# Significance, interpretation and application

Content and scope identical	Content identical, scope wider than the ECHR
Art. 2 (Charter) – Art. 2 (ECHR)	Art. 9 - Art. 12
Art. 4 – Art. 3	Art. 12 - Art. 11
Art. 5 (1) (2) – Art. 4	Art. 14 (1) – Protocol 1 Art. 2
Art. 6 – Art. 5	Art. 14 (3) – Protocol 1 Art. 2
Art. 7 – Art. 8	Art. 47 – Art. 6 (1)
Art. 10 (1) – Art. 9	Art. 50 – Protocol 7 Art. 4
Art. 11 – Art. 10	
Art. 17 – Protocol 1 Art. 1	
Art. 19 (1) – Protocol 4 Art. 4	
Art. 19 (2) – Art. 3	
Art. 48 – Art. 6 (2) (3)	
Art. 49 (1) (2) – Art. 7	

# Significance, interpretation and application

## Scope and interpretation (Art. 52)

- Common constitutional traditions (4) – refers to 6 (3) TEU
- Defines the difference between “rights” and “principles” laid down in the Charter (5) - subjective rights are to be respected, while basic principles are to be adhered to

# Significance, interpretation and application

## Level of protection (Art. 53)

- Level of protection by the Charter can not be lower than the level guaranteed by the ECHR.
- “Horizontal” irreversibility clause
- Principle of “most favourable provision”: level of protection by the Charter can not be lower than the protection of the document cited

# Significance, interpretation and application

## Prohibition of abuse of rights (Art. 54)

- No independent legal character

KPD: *even if the KDP was striving to set up this regime in a constitutional manner, this did not mean that he had given up the former ideas*

Lawless (ECtHR): *even if the applicant aims at the destruction or restriction of the FR of others, this does not entail that he may remain deprived of all the rights laid down in the ECHR*



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**THANK YOU FOR YOUR  
ATTENTION!**



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