



**SUNICOP**

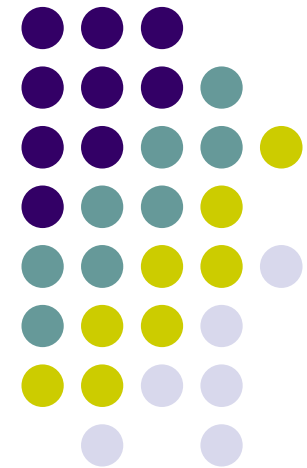
# EUROPEAN CONSTITUTIONAL LAW



**SUNICOP**

# Fundamental Rights and the EU

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# FR-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



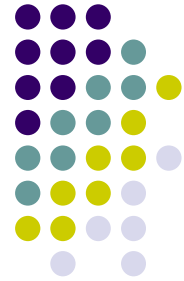
- Human rights protection – terminology
- Implications: world wars, and global challenges (e.g. armed conflicts, child soldiers, terrorism, data-protection, Internet, environment, racism and other fields of discrimination)
- United Nations
  - the UN Covenant on Civil and Political Rights 1966
  - the 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
- Subsidiary character – the states are primarily responsible for protection of human rights



# EU & fundamental rights

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

# 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)

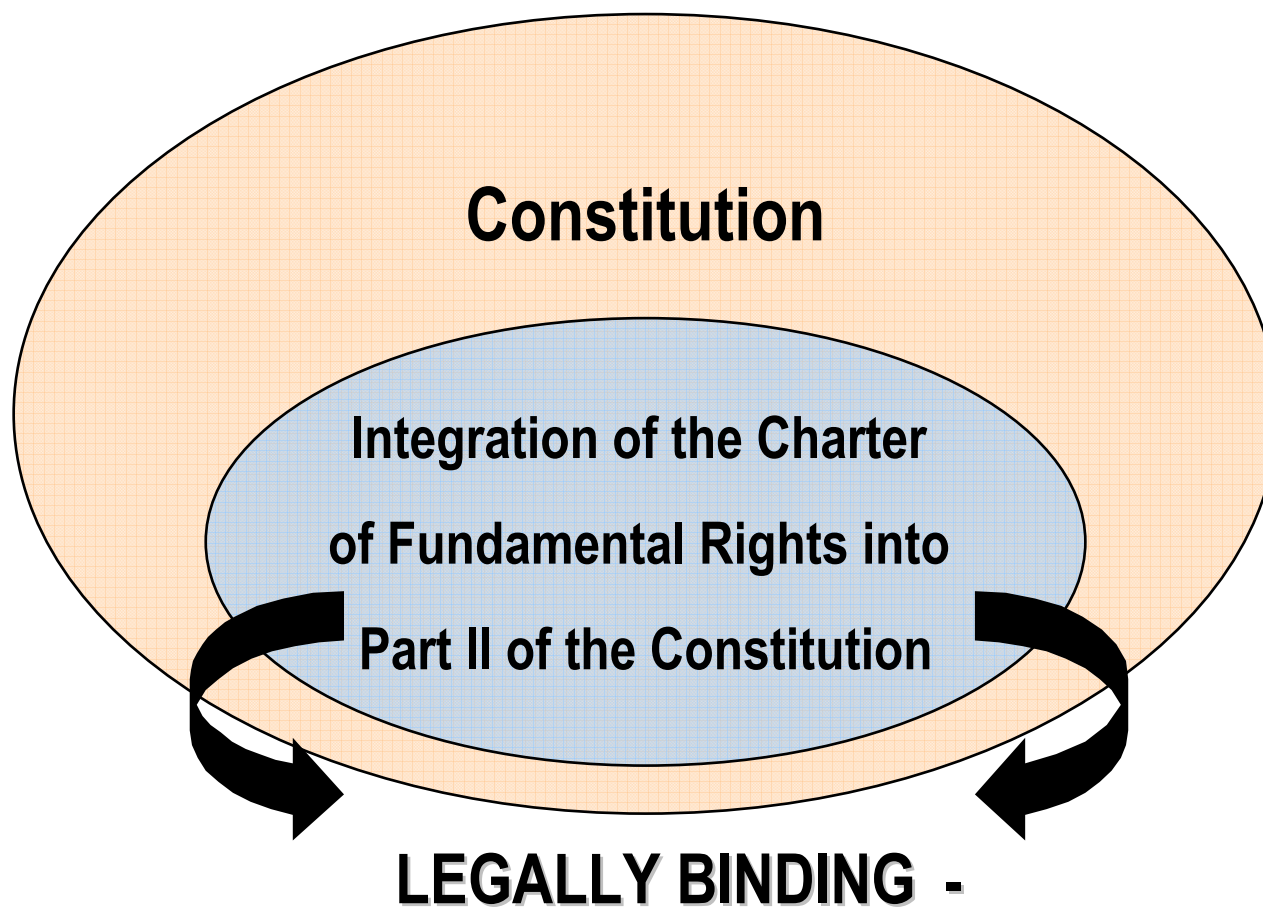
# Normative backgrounds



- 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



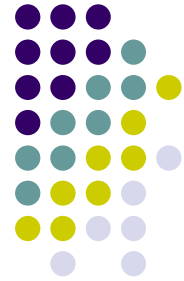
**Lisbon Treaty gives it to the separate document**

# 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 **ECHR** 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)]



# Dignity

- **Human dignity**
- **Right to life** (abolition of death penalty)
- **Right to the integrity of the person** (eg prohibition of reproductive cloning and of eugenic practices)
- **Prohibition of torture and inhuman or degrading treatment or punishment**
- **Prohibition of slavery and forced labour**

# Freedom



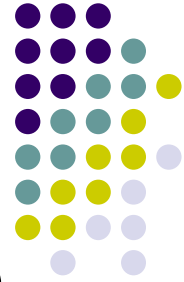
- **Right to liberty and security**
- **Respect for private and family life**
- **Protection of personal data**
- **Right to marry and right to found a family**
- **Freedom of thought, conscience and religion**
- **Freedom of expression and information**
- **Freedom of assembly and of association**
- **Freedom of the arts and sciences**
- **Right to education**
- **Freedom to choose an occupation and right to engage in work**
- **Freedom to conduct a business**
- **Right to property**
- **Right to asylum**
- **Protection in the event of removal, expulsion or extradition**

# Equality



- **Equality before the law**
- **Non-discrimination** also genetic features, sexual orientation)
- **Cultural, religious and linguistic diversity**
- **Equality between women and men**
- **The rights of the child**
- **The rights of the elderly**
- **Integration of persons with disabilities**

# Solidarity



- **Workers' right to information and consultation within the undertaking**
- **Right of collective bargaining and action**
- **Right of access to placement services**
- **Protection in the event of unjustified dismissal**
- **Fair and just working conditions**
- **Prohibition of child labour and protection of young people at work**
- **Family and professional life**
- **Social security and social assistance**
- **Health care**
- **Access to services of general economic interest**
- **Environmental protection**
- **Consumer protection**



# Citizens' rights

- **Right to vote and to stand as a candidate at elections to the European Parliament**
- **Right to vote and to stand as a candidate at municipal elections**
- **Right to good administration**
- **Right of access to documents**
- **European Ombudsman**
- **Right to petition**
- **Freedom of movement and of residence**
- **Diplomatic and consular protection**

# Justice



- **Right to an effective remedy and to a fair trial**
- **Presumption of innocence and right of defence**
- **Principles of legality and proportionality of criminal offences and penalties**
- **Right not to be tried or punished twice in criminal proceedings for the same criminal offence**



# Field of application

- The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.
- The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

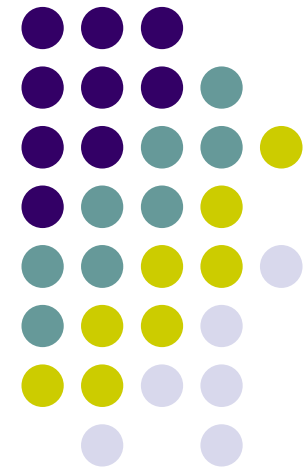


# Level of protection

- Nothing in the Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application,
  - by Union law and international law and by international agreements to which the Union or all the Member States are party, including the ECHR,
  - and by the Member States' constitutions.

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# Integration of European Human Rights Standard & Effective Judicial Protection



# Integration of European human rights standard



- Treaty on the European Union in its Article 6 para. (2) stipulates the obligation (not just the possibility) for the Union to access to the ECHR
- The accession negotiations started on 15th March 2011

# Premises 1

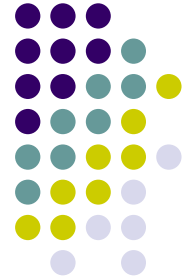
- 1979, European Commission first presented a memorandum on the accession of the EC to the ECHR
- In 1982 and in 1985 the European Parliament asked the Commission to start formal negotiations
- Commission submitted a formal proposal to the Council in 1990
- 1996 ECJ-opinion
- Convention on the Future of the EU in 2002 and 2003
- Treaty on the EU Constitution, Lisbon Treaty



## Premises 2



- These political attempts triggered the two European Courts to approximate their case law
- ECJ: *Nold* case (1974), *Rutili* (1975); *Hauer* case (1979) - *Roquette Frères* (2002), *Booker Aquacultur* (2003); *Kadi and Al Barakaat* (2008)
- ECtHR: case of *Goodwin* (2002), *Pellegrin* case (1999), the landmark *Bosphorus* (2005) judgment



# Instruments of integration

- Charter of Fundamental Rights
  - reflects the principle of subsidiarity
  - intend to promote harmony
  - "horizontal" clause on non-reversal
- Judicial dialogue
  - *As Lech Garlicki, judge of the Strasbourg Court has commented, "judges are, in general, reasonable creatures and their whole professional training prompts them to look for compromise solutions and not for confrontations"*

# On the importance of the integration



- **Joined Cases C-402/05 P and C-415/05 P  
Yassin Abdullah Kadi and Al Barakaat  
International Foundation v**
- **Council of the European Union and  
Commission of the European  
Communities**

# 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)

# Kadi judgement



- The principle of effective judicial protection is a general principle of Community law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention on Human Rights, this principle having furthermore been reaffirmed by Article 47 of the Charter of fundamental rights of the European Union.

# Kadi judgement



- Observance of the obligation to communicate the grounds on which the name of a person or entity is included in the list forming Annex I to Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban is necessary both to enable the persons to whom restrictive measures are addressed to defend their rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in their applying to the Community judicature and also to put the latter fully in a position in which it may carry out the review of the lawfulness of the Community measure in question which is its duty under the EC Treaty.

# Kadi judgement



- Given that those persons or entities were not informed of the evidence adduced against them and having regard to the relationship between the rights of the defence and the right to an effective legal remedy, they have also been unable to defend their rights with regard to that evidence in satisfactory conditions before the Community judicature and the latter is not able to undertake the review of the lawfulness of that regulation in so far as it concerns those persons or entities, with the result that it must be held that their right to an effective legal remedy has also been infringed.