

# **„The New European Fundamental Rights Architecture“**

**Visit of the Supreme Court  
of the Kingdom of Bhutan  
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©

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# Treaty of Lisbon I

**Art. 2 EU Treaty → Union is founded on following values:**

- **Respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of persons belonging to minorities.**
- **These values are common to Member States' societies in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.**

**Art. 3 EU Treaty → other values:**

- **Peace, social justice and protection, solidarity between generations, rights of the child, cultural and linguistic diversity, cultural heritage, etc.**

# Treaty of Lisbon II

## Art. 6 EU Treaty:

- Union recognises rights, freedoms and principles set out in the **Charter of Fundamental Rights**
  - which has the same legal status as the Treaties
  - interpretation of the Charter has to be in accordance with Title VII of the Charter → in particular with the European Convention on Human Rights (ECHR)
- **EU shall accede to the ECHR**
- **ECHR and common constitutional traditions of the Member States remain the general principles of EU law**

## Art. 7 EU Treaty:

- Sanction mechanism remains

# Treaty of Lisbon III

## Art. 21 EU Treaty:

- External actions of EU shall be guided by following principles:
  - democracy and the rule of law
  - universality and indivisibility of human rights and fundamental freedoms
  - respect for human dignity
  - principles of equality and solidarity
  - respect for the principles of the UN Charter and international law

# Charter as EU primary law

- Charter is annex to the **Treaty of Lisbon** and reference is made to it in the new **Art. 6 EU Treaty**
- With entering into force of the Lisbon Treaty the Charter became **primary law** →
- Charter is **legally binding** for EU-Organs and member States in the application of EU law
- **Enforceable before the European Court of Justice (ECJ)** by Parliament, Council and Commission, and Member States  
→ but yet no general **individual complaint procedure** before ECJ (only preliminary ruling procedures in the course of national proceedings)

# Contents of the Charter

- **Civil and political rights as well as economic, social and cultural rights**
- **Ambiguous:** some general objectives for EU policies (environmental protection and consumer protection)
- **Structure of the Charter rights**
  - „Human Dignity “
  - „Freedoms“
  - „Equality“
  - „Solidarity “
  - „Citizen’s rights “
  - „Justice“

# Relationship Charter – ECHR I

- **Charter guarantees beyond the ECHR:**
  - right to carry out profession, right to asylum
  - economic, social and cultural rights
- **Charter adopts partly European Court of Human Rights (ECtHR) case law:**
  - human dignity
  - principle of non-refoulement
  - protection of personal integrity and data protection
  - freedom of conscientious objection to military duty
  - freedom of art and science
- **Charter lacks some of the rights of the ECHR:**
  - freedom of movement
  - prohibition of imprisonment for debt
  - right to appeal to an independent authority in criminal matters

# Relationship Charter – ECHR II

- **Scope of the rights of the Charter (Art. 52)**
  - to be understood in the **same way and to the same extent** as the rights of the ECHR interpreted by the ECtHR
- **Therefore, ECHR constitutes the European fundamental rights standards** with regard to civil and political rights
  - that means that respective Charter rights must not be restricted to a greater extent than ECHR rights
- **Safeguard for level of human rights protection (Art. 53)**
  - no right of the Charter shall be interpreted as restricting human rights recognized in other human rights conventions including the ECHR



# Relationship Charter – ECHR – national legal orders

- Charter and ECHR have to be observed by EU
- All EU member States are members of the ECHR  
→ obligation to observe ECHR:
  - in national legislation and practice
  - when adopting international law, also EU primary law (for which unanimity is required!)
- National implementation of EU law has to conform to the Charter, the ECHR and normally to national fundamental rights law, too
- When EU accedes to ECHR → EU secondary law and EU case-law have to be in conformity with ECHR

# Relationship ECJ – ECtHR

- Principle of considering the respective case-law
- Yet, ECtHR highest instance for the compliance with human rights in Europe → follows from cases:
  - *Matthews v. United Kingdom*
    - violation of the right to vote into the EP
  - *Senator Lines v. The 15 EU-Member States*
    - imposition of a provisional fine by the EC
  - *Bosphorus v. Ireland*
    - confiscation of an aircraft due to UN/EU-sanctions against YU – “As long as”-jurisdiction of ECtHR)
  - *Khankhel v. Austria*
    - “Dublin II” Regulation seems to be not in accordance with Art. 3 ECHR, ECtHR requests for preliminary measures (not to expel asylum seekers to Greece)

# Possible remedies at present

- In **domestic proceedings** a national court commences a **preliminary ruling procedure at the ECJ**, requesting for clarification with regard to the application and interpretation of EU law
- **National court decides the case** in accordance with the ruling of the ECJ – final domestic decision may be appealed against before the ECtHR
- **ECtHR decides** whether ECHR has been violated by member State (possible result: contradiction to the ruling of ECJ)
- But: „**As long as**”-jurisdiction of the ECtHR → as long as EU fundamental rights protection meets the requirements of ECHR the ECtHR will not assess the respective case in substance

# EU Agency for Fundamental Rights

## ■ Establishment:

- 1 May 2007 Council Regulation (EC) No. 168/2007 of 15 February 2007 → “FRA”

## ■ Objective:

- Provision of assistance and expertise relating to fundamental rights for all EU organs and member States → **advisory organ, „think-tank“**

## ■ Scope of application:

- **EU law** including application in Member States

## ■ Assessment criteria :

- **Art. 6 EU Treaty** (human rights, in particular ECHR and Charter of Fundamental Rights)

# FRA – Mandate

- Collection, analysis and dissemination of **reliable and comparable data**
- Compilation of **feasibility studies** (on FRA's own initiative or on request of the relevant EU organs)
- Provision of **expert opinions** (on FRA's own initiative or on request of the relevant EU organs)
- Formulation and publication of **thematic reports**
- **Promotion of fundamental rights** and fostering the **dialog with civil society**

# FRA – Topics

## ■ Multi-annual Framework 2007-2012 →

### Thematic Areas:

- Racism, xenophobia and related intolerance
- Discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities, and multiple discrimination
- Compensation of victims
- Rights of the child, including protection of children
- Asylum, immigration and integration of migrants
- Visa and border control
- Participation of EU citizens in the Union's democratic functioning
- Information society and, in particular, respect for private life and protection of personal data
- Access to efficient and independent justice

# FRA – Cooperation

**Cooperation of FRA with civil society, science and international organisations:**

- **Fundamental Rights Platform (FRP):** involvement of civil society
- **Scientific Committee** → quality control
- **RAXEN** (National Focal Points for racism, xenophobia and related intolerance )
- **FRALEX** (legal experts group)
- RAXEN and FRALEX will be merged
- **Cooperation with Member States, Council of Europe, OSCE and UN**

# FRA – Deficits

- **Not within the Agency's mandate are:**

- sanction proceedings according to Art. 7 EU Treaty → but EU organs and member States may avail FRA's expertise in such cases → review considered to widen FRA's remit
- external actions of the EU (exemption: when affecting internal affairs)

- **Agency has no authority to:**

- formulate and publish expert opinions on EU draft legislative matters on its own initiative, i.e. without a specific request by Parliament, Council, or Commission



# FRA – Chances

- **High degree of quality and professionalism** → respect und acceptance from EU organs and member States
- **Constructive dialogue** with Parliament (LIBE-Committee) and the Commissioner for Justice, Fundamental Rights and Citizenship → influence on EU law-making
- Transparent, discursive **cooperation with science and civil society** → strengthens FRA's credibility
- Development to a European fundamental rights „**think-tank**“ → support for a “**human rights based approach**” of politics

**Thank you for your attention!**

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**<http://bim.lbg.ac.at>**