RED SPINEL

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TRAINING RESOURCES FOR EUROPEAN LEGAL PRACTITIONERS FOCUSING ON 'THE EU CHARTER OF FUNDAMENTAL RIGHTS AS A LITIGATION TOOL'

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I. INTRODUCTION

This Training Resources document is designed to support European legal practitioners in deepening their understanding of and strengthening their capacity to engage with the Charter of Fundamental Rights of the European Union (Charter) in both domestic and European litigation. It combines theoretical insight with practical guidance on how to mobilize the Charter in legal proceedings, with a particular focus on its strategic use in defending fundamental rights and the rule of law. The aim is to equip legal professionals to identify, litigate and ultimately remedy (potential) violations of fundamental rights through strategic litigation that seeks to achieve systemic change. The Training Resources document was prepared in the framework of the RED-SPINEL project, supported by the Horizon Europe programme.

A central focus of the material is the use of litigation for strategic purposes at both the national and the European level. Strategic litigation refers to legal action that goes beyond resolving individual disputes to challenge laws, policies or institutional practices that threaten broader democratic values and rights. It is a deliberate approach to litigation, aimed at setting legal precedents, exposing systemic violations, or driving political and social change. The material explores how such litigation can be initiated and sustained, which procedural avenues can be used, and how legal practitioners can maximize its impact by combining legal arguments with broader advocacy strategies.

Equally central is the relevance and scope of application of the Charter in strategic litigation, both within Member States and before EU institutions. The Charter is a powerful but underutilized instrument in legal practice. This material clarifies when and how the Charter applies and the legal thresholds for invoking it in national proceedings. It also provides guidance on how to bring Charter-based arguments before national courts and, where appropriate, escalate them to the Court of Justice of the European Union (CJEU).

To enhance the practical dimension, the Annex of this material includes a case law database featuring examples from four EU Member States — Hungary, Poland, Belgium and the Netherlands —, each selected to illustrate how the Charter can be mobilized in litigation around a specific fundamental rights issue. These countries were chosen because each represents different types of dissensus over liberal democracy and challenges to the rule of law, with the databases supplied by RED-SPINEL project partners. The Hungarian cases focus on the rule of law, reflecting the country's sustained institutional erosion and democratic backsliding since 2010. The Polish case law addresses media freedom, an area facing significant constraints despite recent governmental change and promises of reform. Belgium is examined through the lens of equality and non-discrimination, with selected cases involving racial or ethnic discrimination and access to services highlighting how Charter-based arguments can be used in domestic equality litigation. The Netherlands case law is centred on climate justice, showcasing how civil

society-led strategic litigation has been used to hold the state accountable for its environmental obligations. In addition to the national case law, the Annex includes relevant jurisprudence from the Court of Justice of the European Union, illustrating how the Charter can function as an effective tool in both domestic and European litigation, and how strategic legal action can contribute to upholding the EU's foundational values in practice.

Overall, this material, together with the accompanying case law, is intended to enhance the capacity of legal practitioners to engage with the EU Charter of Fundamental Rights as a practical and strategic instrument for rights protection. By demonstrating its application across diverse thematic areas — such as the rule of law, media freedom, equality and climate justice — the Training Resources document encourages the deliberate and effective use of litigation to address structural challenges and advance the EU's foundational values.

II. WHAT IS STRATEGIC LITIGATION AT THE NATIONAL AND THE EU LEVEL?

II.1. What is strategic litigation and how can it be defined?

Many scholars have addressed the topic of strategic litigation, and several definitions can be proposed. In essence, they all refer to the "continuation of politics by other means" and they are closely intertwined with legal mobilisation, understood as "any type of process by which individuals or collective actors invoke legal norms, discourse, or symbols to influence policy, culture or behavior.[1]

Strategic litigation usually refers in lay terms to the mobilization of legal complaints before judges to challenge the validity and/or legality of a norm or a practice. Strategic litigation can be defined as the "recourse to the courts to try and affect a legal change which the other organs of democratic governance are unable or unwilling to do."[2] Other authors have developed a more nuanced definition, referring to strategic litigation as the "(intention of) legal action through a judicial mechanism in order to secure an outcome, either by an affected party or on behalf of an affected party (…) used as a means to reach objectives which consist of creating change (e.g. legal, political, social) beyond the individual case or interest."[3]

A first clarification may thus be made to exclude some avenues of legal mobilisation from the scope of strategic litigation. As stressed above, the notion of strategic litigation relies primarily on the possibility to bring a case before a judge. This implies that other mechanisms for ensuring accountability and/or respect for fundamental rights are excluded from the notion, although they

1 K. Van der Pas, "Strategic Litigation," in Re*dressing Fundamental Rights Violations by the EU*, ed. M. Fink (Cambridge, Cambridge University Press, 2024), 210.

2 A. O'Neill, "Strategic litigation before the European Courts," *ERA Forum* 16 (2015): 496.

3 Van der Pas, K., 209.

might in certain national contexts be a prerequisite to judicial proceedings. This is the case, for instance, of administrative procedures that allow parties to bring a complaint before administrative bodies, be it national human rights institutions or independent actors specialising in specific areas of law (e.g., data protection, financial transparency). It also excludes mechanisms closer to advocacy or lobbying, through which affected parties attempt to mobilise parliamentary actors or raise awareness in public opinion.

Strategic litigation can also refer to very diverse types of legal actions depending on the actors engaging in such initiatives. The type of strategic litigation under scrutiny is often limited to a particular type of litigant, interest and normative focus, strategic litigation being first and foremost perceived as a "civil society organisation or individuals pursuing litigation for the public interest with the aim to advance a progressive agenda."[4] In contrast, strategic litigation may also be relied upon by other actors, in particular corporate actors, when seeking to challenge a norm they disagree with, for instance in the field of environmental protection,[5] or to attempt to silence public debate and exclude journalists, non-governmental organisations, academics or human rights defenders from public participation. The latter has even been the subject of an EU Directive[6] known as the Anti-SLAPP Directive (Strategic Lawsuits Against Public Participation), which seeks to prevent lawsuits or threats of legal action that engage abusive tactics with the aim or effect of stifling public interest discourse.[7] Strategic litigation may thus not always favour the promotion of human rights, and it can constitute a way to undermine media freedom or democratic debate.

The concept of strategic litigation has been developed over time, notably to conceptualise the approach taken by individuals and lawyers engaged in emblematic cases brought before national or European courts, in order to give more substance and "legal flesh" to rights enshrined in international, European or national human rights instruments (e.g., international agreements, EU treaties, the European Social Charter or the European Convention on Human Rights, national constitutions, etc.).

4 S. Fleerackers, "Hidden in Plain Sight? Corporate Strategic Litigation in the EU Emissions Trading System," *German Law Journal*, 25 (2025): 877.

5 Fleerackers.

6 Directive (EU) 2024/1069 of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings, 2024 O.J. L 2024/1069.

7 J. Borg-Barthet, and F. Farrington, "The EU's Anti-SLAPP Directive: A Partial Victory for Rule of Law Advocacy in Europe," *German Law Journal*, 25 (2025): 840.

Relevant Case: The Defrenne Saga

In the 1970s, three cases were brought before the European Court of Justice challenging rules in a Belgian airline that discriminated between male and female flight attendants.

Through legal mobilization and the **preliminary reference procedure**, the Court:

- Clarified the scope of **Article 119 Treaty on the European Community** (equal pay for men and women).
- Recognized its **direct applicability**, making the right enforceable by individuals.

This early case law on gender equality paved the way for expansion into other human rights fields — including **children's rights, climate change, migration and religious freedom.**

II.2. What are the legal avenues that can be mobilized for strategic litigation?

Legal systems are nowadays characterised by multi-level complexity in terms of the norms protecting human rights, but also in terms of overlaps between instruments, courts and legal actions. To put it in a nutshell, violations of human rights can originate in the behaviours and actions of a multiplicity of actors, like national governments, authorities or administrations, private parties (natural or legal persons) or intergovernmental organisations, such as the European Union. Remedies for human rights violations caused by a Member State or the European Union can be found in different instruments and before judicial actors with complementary mandates. As an example, we can for instance refer to the complementarity of the Charter and the European Convention on Human Rights (Convention): both instruments may be applied and interpreted by national judges, who can rely on the case law of the CJEU and the European Court of Human Rights (ECtHR) whose interpretations shape the scope of application and the content of the rights enshrined therein. In so far as the Charter contains rights which correspond to rights guaranteed by the Convention, the meaning and scope of those rights shall be the same as those laid down by the Convention.

Strategic litigation complements other types of enforcement mechanisms that allow for the facilitation of respect for fundamental rights. As an example of a top-down approach, one can for instance refer to infringement proceedings that can be brought by the European Commission or a Member State before the CJEU under Articles 258 and 259 TFEU, in order to obtain the declaration that a national action is contrary to EU law. While infringement proceedings may often cover very precise and technical aspects of EU law, they can also be relevant for the protection of human rights.

Relevant Case: Commission v. Hungary (C-769/22)

This case illustrates the **complementarity of EU norms**.

- **Background**: Hungary adopted the so-called "Child Protection Act", which forbids or restricts access for minors under 18 to materials depicting "a divergence from the identity corresponding to the sex at birth, the change of sex, or homosexuality."
- **At the CJEU**: The Commission argued violations of:
  - **Secondary EU law instruments**,
  - **The EU Charter of Fundamental Rights**, and
  - An **autonomous breach of Article 2 Treaty on the European Union** (TEU).

The case shows how different layers of EU law can be mobilized together when challenging national measures.

In a complex multi-level system of legal remedies, strategic litigation is best defined as a bottom-up mechanism, in which litigants decide autonomously whether to engage in a legal action, the arguments and rights they want to put forward, and the legal avenues they choose to follow.

Litigants first face a choice among the different types of legal actions that can be initiated. The easiest are direct legal actions before a national judge or the European courts, but other legal actions, more indirect and complex, may also be available. The selection of the preferred action may not always be very clear, especially taking into account that the hierarchy of the human rights standards and their respective scope of application may be contested.

As an example, we can refer to a fictitious situation of individuals seeking to challenge an administrative act adopted by a local administration on the basis of a national legislation transposing an EU Directive. Should the persons consider that this administrative act violates their fundamental rights, they may – under the conditions defined by national law – initiate a judicial proceeding before a national court. However, the review of the legality of the attacked act may require a clarification regarding the interpretation of the EU Directive, or bring up a more serious question regarding the validity of the Directive that might itself infringe human rights. Such questions cannot be ruled upon at the national level, as certain landmark cases have defined the respective roles of the CJEU and national courts (e.g., *Foto-Frost* preventing national courts from reviewing the legality of EU instruments with the EU Treaties). This may lead (or must lead in some cases) the national judge to initiate a request for a preliminary ruling to the CJEU.[8] In such circumstances, the direct action before the national judge will be somehow "put on hold" for as long as the procedure is ongoing at the EU level. The delivery of a judgment by the judges of

8 Please note that as of 1 October 2024 a reform of the Statute of the Court applies, leading to a partial reallocation of preliminary references between the Court and the General Court, the latter being competent in specific fields (i.e., VAT, customs, passengers' rights or European Emission Trading Scheme). Preliminary rulings may thus be discussed and ruled upon by both jurisdictions.

the CJEU does not close the case, as the national judge must still deliver her/his own judgment, which may carry out the court's assessment, for instance of the proportionality of the interference with the right allegedly infringed. Such a form of indirect judicial review is particularly frequent whenever the rights invoked find a protection in EU primary or secondary law, and the judgment of the CJEU may have an important impact on the outcome of the case at national level.

National administrative act

↓

Individuals challenge before national court

↓

Question of EU law arises

↓

National court requests preliminary ruling

↓

CJEU delivers judgment

↓

Case returns to national court

↓

National court delivers final judgment

However, it is important to stress that the preliminary ruling is mostly a procedure of judicial dialogue between EU and national judges, with limited considerations or interest for the parties. Thus, "the preliminary ruling procedure is not a remedy oriented to the redress of breaches suffered by private parties, but rather a system of cooperation oriented towards the uniformity of the EU legal order."[9] The consequences of a strategic lawsuit which led to a judgment of the CJEU favorable to the arguments of the applicant may still fail to produce any change, as demonstrated, for example, by the challenge of the reintroduction of internal border controls beyond the time foreseen in the Schengen Borders Code.[10] Yet the preliminary ruling procedure is often analysed with respect to strategic litigation, akin to a "citizens' infringement procedure", due to its transnational effects and further due to the possibility of capitalising on the diversity of national procedural rules to gain access to a court in more open legal systems.

9 L. López Zurita, "Fundamental Rights Complaints in the Preliminary Reference Procedure," in *Redressing Fundamental Rights Violations by the EU*, ed. M. Fink (Cambridge, Cambridge University Press, 2024) 118.

10 Despite a ruling of the CJEU aligning with the litigant's claim according to which the internal border controls cannot be maintained beyond the temporal limits set in the Schengen Border Code, the controls remained in place and EU Member States pushed for a reform of the Code "legalising" their practice. For more details, see S. Salomon, "What Happens After the Court of Justice Has Given its Ruling? Promises and Pitfalls of Strategic Litigation Against Internal Border Controls in EU Law," *German Law Journal*, 25 (2024): 1043–1067.

Further complexity may also arise when the same right is protected by two or more different instruments that may be mobilized before different jurisdictions.

Relevant Case Law: Attacks on Judicial Independence (Poland)

The complexity of EU and human rights protections is well illustrated by cases concerning j**udicial independence in Poland.**

- **Legal bases invoked:v**
  - **Article 19 TEU** – effective judicial protection.
  - **Article 47 EU Charter** – right of access to justice.
  - **Article 6 ECHR** – right to a fair trial.
- **Procedural outcomes:**
  - Triggered **direct and indirect actions** before both the **CJEU** and the **ECtHR**.

This demonstrates how overlapping legal frameworks can be mobilized in parallel to safeguard judicial independence.

II.3. Factors that may influence strategic litigation

Litigants seeking to initiate strategic litigation must thus engage in an assessment of their legal opportunities: which source of protection can I invoke? Which court or judge is competent to carry out a judicial review of respect for the provisions? What are the conditions to be met for the admissibility of a legal action?

Scholars have laid out the strategic considerations that potential litigants may consider before engaging in a legal action with the aim of challenging a specific legal norm or situation. The main dimensions they cover will be addressed below.

II.3.1. Identification of a source of rights that can be invoked before the chosen judge

The first step to be taken and decision to be made is to single out the source of protection of human rights that will be mobilised in a strategic litigation case. The choice of the relevant sources will, unsurprisingly, largely depend on the types of violations for which a remedy is sought and the instruments that may offer a source of protection. The key factor to analyse here is the availability of justiciable rights.[11]

Two remarks can be made here. The first concerns the selection of the rights that may be infringed. Here a choice might be made in selecting those most likely to gain traction before national judges.

11 G. De Fazio, "Legal opportunity structure and social movement strategy in Northern Ireland and southern United States," *International Journal of Comparative Sociology*, 53 (2012): 3, quoted in Van der Pas, 212.

To illustrate such considerations, we can refer to strategies deployed in the field of migration and asylum, in which lawyers, aware of the limited justiciability of the right to asylum, prefer to rely on "procedural rights", such as those guaranteeing access to justice, to challenge legal decisions that may infringe upon the fundamental rights of migrants.[12] In a similar vein, other actors, especially civil society organisations, have attempted to rely on the protection of personal data to challenge the increasing reliance on automated systems used to process applications.[13] The second remark concerns the possibility of relying on these rights before judges and seeking their enforcement against a norm or a practice. In that regard, EU law offers a large set of rights that can be invoked in court through the well-known and established principle of direct effect. Without entering into lengthy considerations on the conditions of direct effect, it suffices to point out that direct effect can be applicable not only for those rights enshrined in EU primary law (EU treaties or with some attenuations the EU Charter), but also for those enshrined in EU secondary instruments, as well as those identified as general principles of EU law.

Recommendation for Practitioners

When framing a claim in migration or asylum cases, emphasize procedural rights such as access to justice and the right to a fair hearing, as these are effective grounds for judicial review.

II.3.2. Admissibility of the complaint at the national or EU level

The second factor that may determine whether a strategic lawsuit can be initiated lies in the admissibility of the complaint before the judge, or in other terms, whether the rules regarding legal standing allow the person or the organisation to bring a case before the court.

In this regard, the possibility to combine strategic litigation at national and/or EU level presents a clear advantage. Authors have repeatedly stressed the lack of a common level playing field at the national level with regard to procedural rules, highlighting how much "national legal systems differ widely in the type of access they grant individuals, groups and companies to their judicial system."[14] As litigants are bound by national rules to be able to bring a claim, the possibility of launching strategic litigation cases may vary significantly from one country to another, since not all European countries have the same legal traditions when it comes to public interest litigation or the legal standing of civil society organisations. Such diversity also impacts the possibility for third parties (e.g., civil society organisations willing to support an individual applicant) to

12 RED-SPINEL Workshop in Brussels, 12 September 2024.

13 F. Palmiotto, and D. Ozkul, "Climbing a Wall: Strategic Litigation Against Automated Systems in Migration and Asylum," *German Law Journal*, 25 (2025): 935–955.

14 A. Hofmann, "The Role of National Courts in Redressing Fundamental Rights Violations by the EU", in *Redressing Fundamental Rights Violations by the EU*, ed. M. Fink (Cambridge, Cambridge University Press, 2024), 160.

intervene in proceedings. Divergences in national procedural rules also have an impact whenever the preliminary ruling procedure is mobilised, since only the parties active in the proceedings at the national level can intervene in the proceedings before the CJEU.[15]

Interestingly, certain instruments - especially EU secondary law instruments - may positively impact the openness of national procedures. As a first example, we can refer to the Aarhus Convention, which is now integrated in the EU's legal order, which contains strong key procedural rights with a strong environmental component, especially the right to access justice for persons having a sufficient interest in an environmental matter (Article 9(2)). The convention led to a line of case law by the CJEU recognising that the standing of environmental protection organisations had to be recognised in national law as a matter of EU law, and that national courts were obliged as a matter of EU law to interpret and apply, to the fullest extent possible, national procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings.[16] As a second example we can refer to the EU non-discrimination directives, which contain a provision that obliges Member States to ensure standing for organisations wanting to tackle discrimination in an administrative or judicial procedure.[17]

However, access to EU courts can be even more restrained than access to national courts, and they are referred to by some as a "hostile environment". Direct annulment actions are limited by strict admissibility requirements defined in Article 263 (4) TFEU, and to challenge acts of general application litigants must demonstrate a direct and individual concern. The latter was interpreted restrictively by the CJEU in the *Plaumann case*.[18] The decision is considered a barrier to EU judicial review, and many attempts to invite the CJEU to soften its interpretation have failed. This is for instance evidenced in strategic litigation attempts in the fields of environmental protection (e.g., the People's Climate case, which led to the *Carvalho judgment*[19]) or migration (e.g., the cases against the "EU-Turkey deal" or the operations at sea involving Frontex). The indirect judicial review offered by the preliminary reference procedure is also far from satisfactory considering the dependency on national procedural rules to obtain legal standing, the discretion of the national courts in referring and drafting the preliminary question, and further the procedural freedom of the CJEU that may change the scope of the question or rephrase it.[20]

15 This does not apply to the EU Member States and the EU institutions that can always decide to join the proceedings if they consider it relevant (2023).

16 *Bund für Umwelt- und Naturschutz Deutschland* (Case C-115/09, ECR I-3673)[2011] paragraphs 44–47, and Lesoochranárske zoskupenie VLK v. Slovakia (Case C-240/09,ECR I-1255) [2011], both discussed in O'Neill, 500–501.

17 Van der Pas, 226, footnote 98.

18 For more details, see K. Lenaerts, K. Gutman, and J.T. Nowak, *EU Procedural Law*, 2nd ed. (Oxford, Oxford University Press, 2023), 331. (individual concern)

19 *Armando Carvalho and Others v European Parliament and Council* (Case C-565/19 P, ECLI:EU:C:2021:252) [2021].

20 López Zurita, 104–108.

Recommendation for Practitioners

Check admissibility rules early. Standing varies widely across Member States. Where national rules are restrictive, consider relying on EU instruments (e.g., Aarhus Convention, anti-discrimination directives) that can broaden access.

II.3.3. Need for expertise and experience in strategic litigation (euro-lawyers and ways to get access to such expertise)

A final factor lies in the expertise of the applicants. The academic literature repeatedly insists on the need to meet the resource demands of litigation. Beyond the financial resources to sustain the costs associated with long proceedings, potentially before multiple national and supranational jurisdictions, the legal quality of the complaint will be a key factor in the prospects for a successful legal challenge.[21]

As a consequence, the mobilisation of certain sources of rights, such as the EU Charter, requires specific expertise in EU law (euro-expertise) that may be acquired by some litigants through repeated attempts and engagement in strategic litigations mobilising EU law and/or EU courts. Nowadays, litigants that may not have such expertise in-house can find assistance in such matters through the increasing number of multinational law firms or pro-bono lawyers. "Cheaper" alternatives also exist, notably collaboration with legal clinics or academics. However, other considerations may come into play, such as a perception that national judges might be reluctant to refer preliminary questions to the CJEU, or the organisation of law curricula and academic research at the national level, leading some actors to prefer mobilising alternative judicial arguments and avenues, such as the European Convention on Human Rights and applications before the European Court of Human Rights.[22]

Recommendation for Practitioners

Before initiating litigation, map your resources. Strategic cases often last years and may go through multiple jurisdictions. Partner with NGOs, legal clinics, or pro bono lawyers to sustain expertise.

21 Hofmann, 161.

22 V. Passalacqua, "Explore the Silence: The Absence of Preliminary References from Greek Courts on Migration and Asylum," *German Law Journal*, 25 (2024): 986–988 and 992–999.

III. THE CHARTER OF FUNDAMENTAL RIGHTS AND STRATEGIC LITIGATION

III.1. Overview

The Charter of Fundamental Rights of the European Union[23] is an important but under-utilised tool for the protection of rights. It entered into force in 2009 with the adoption of the Lisbon Treaty and brings together a wide and modern set of fundamental rights, applicable across the European Union. However, it is only in the last five years that Charter rights have been central to cases before the Court of Justice of the European Union, partly due to limits in litigating Charter rights and partly due to limited knowledge among legal practitioners. On the 10th anniversary of the Charter then Vice President of the European Commission Věra Jourová stated:

> *"...the Charter is a symbol of our shared European identity, the knowledge that we all belong to a community of values where fundamental rights are respected; where democracy and the rule of law prevail."*

To reinforce this vision and potential of the Charter the European Commission adopted a new strategy[24] to strengthen the application of the Charter, primarily designed to widen knowledge.

III.2. Charter rights

The Charter sets out a **modern catalogue of 50 rights and principles**, organised under six core themes: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice. It builds on the European Convention on Human Rights and in many cases directly mirrors ECHR rights. However, it also expands on some of these protections and incorporates a wider range of rights, including economic and social rights and rights such as environmental protection that have come to the fore in recent years. In part the Charter sought to incorporate jurisprudence from regional and international courts, particularly the CJEU, and reflects a modern evolution since the ECHR was adopted 75 years ago.

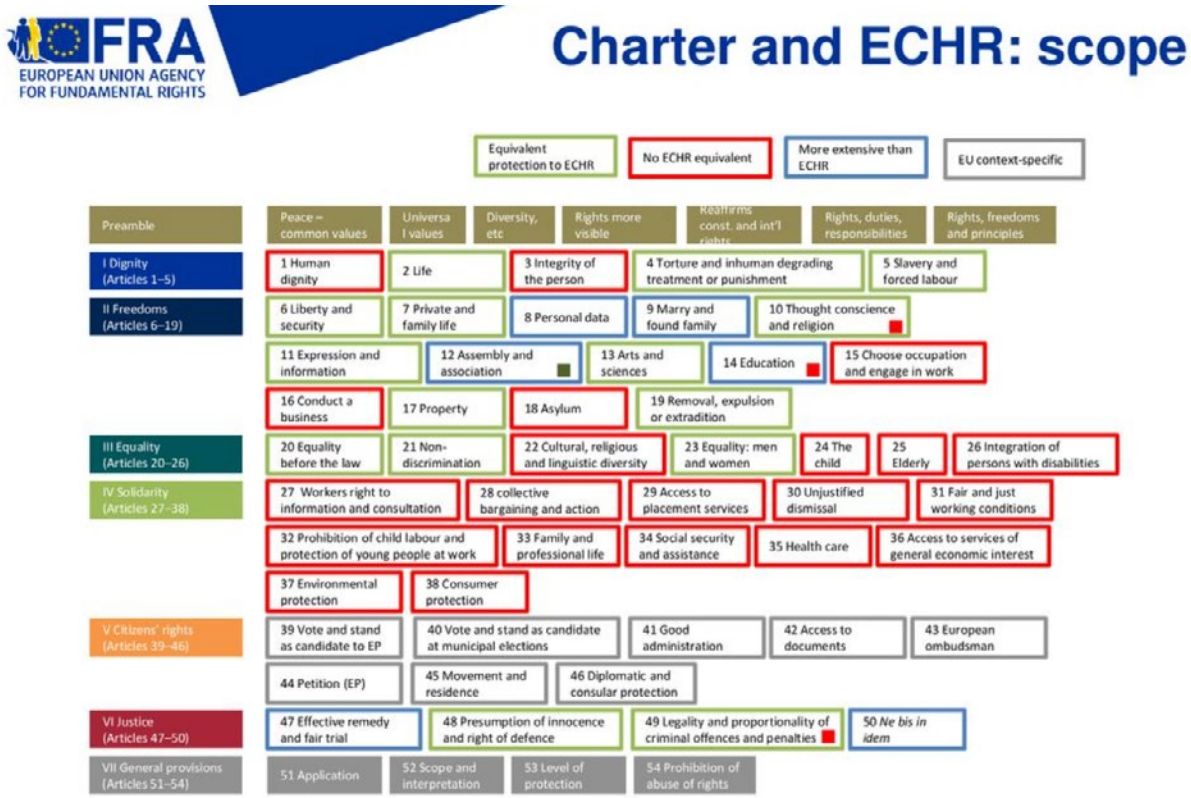
Rights that mirror ECHR rights include core civil and political rights such as the right to life, prohibition of torture and freedom from slavery, as well as core freedoms of expression, association and assembly. The Charter provides additional detail related to some of these rights, for example specifically including a prohibition on human trafficking in Article 5 on freedom from slavery and respect for a free pluralistic media, further elaborating Article 11 on free expression.

23 EU Charter of Fundamental Rights https://www.europarl.europa.eu/charter/pdf/text_en.pdf

24 Strategy on the Application of the Charter; see https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0711&qid=1608047356199

Rights that are not explicitly included in the ECHR include Article 8 on the right to data protection, Article 13 on artistic and academic freedom, Article 37 on environmental protection, and Articles 27 to 31 on workers' rights. There is also a set of rights specifically linked to the rights of EU citizens, such as Article 39 on the right to stand in EU elections and Article 42 on access to documents.

Figure 1: The Charter in relation to ECHR rights. Source: FRA



The final articles address the scope and protection of the Charter. While expanding some rights, the Charter also clarifies that nothing in the Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised under regional and international law. The relation with the ECHR is of particular importance, as the level of protection under the Charter may never be lower than that guaranteed by the ECHR:

- Article 52 sets out the **scope and interpretation** of rights and principles within limits of the Treaties and equivalent to the ECHR, noting that any limits must be provided by law, proportionate and meet general interest objectives;
- Article 53 determines that the **level of protection** can never be lower than that provided in the ECHR; and
- Article 54 **prohibits the abuse of rights**.

III.3. Application of the Charter

While setting out a wide category of rights, the application of the Charter is not straightforward, as it requires litigants to find an entry point to EU law. This is because the Charter only applies when Member States are implementing EU law, as set out in Article 51 of the Charter:

> Article 51 – Field of application 1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union [...] and to the Member States only when they are implementing Union law.

This means that when a Member State is **implementing EU law,** notably acting in areas covered by the EU Treaties, Directives and Regulations, they are obliged to comply with rights under the Charter. However, when acting outside of the scope of EU law, Charter rights cannot be applied on their own. While this might seem limiting, the scope of EU law is quite wide and there is a small but growing body of case law.

In essence, Member States act as representatives of the EU when transposing or executing EU laws including Regulations, Directives, International Agreements concluded by the EU and the Treaties. The most obvious example of 'implementing EU law' is when a national legislation is transposing or implementing a piece of EU law: as such, when a case links to such national legislation, the Charter applies. Some EU laws, namely directives, allow Member States a **margin of appreciation** in how they achieve the objectives set out in the directive. However, even with this margin of appreciation, they will still be considered as implementing EU law. By contrast, if a Member State legislates with more **stringent conditions** than required by a directive (known as gold-plating), then generally the additional conditions would not be considered part of EU law and thus the Charter would not apply.

A more nuanced situation is where national legislation that is not adopted to implement EU law and is of purely domestic origin can still involve the 'implementation of Union law'. This can occur when a specific piece of national legislation doesn't emanate directly from EU law but might cover areas governed by EU law, whereby the Charter may apply.[25] However, the CJEU has made it clear that the **mere interaction** of the subject matter of national legislation with EU law is not sufficient to bring that legislation within the scope of EU law and thus the scope of the Charter. [26]

These legal gymnastics make the application of the Charter more complex. However, as will be seen through the cases in this Chapter, when the Charter is applied it is a powerful tool for the protection of rights.

25 *Seda Kücükdeveci v. Swedex GmbH & Co. KG [GC]*, (CJEU, C-555/0,) [2010].

26 *Cruciano Siragusa v. Regione Sicilia — Soprintendenza Beni Culturali e Ambientali di Palermo* (CJEU, C-206/13) [2014], para. 24; *Víctor Manuel Julian Hernández and Others v. Reino de España (Subdelegación del Gobierno de España en Alicante) and Others* (CJEU, C-198/13) [2014], paras. 25 and 37.

Figure 2: The Shark and the Remora fish

For litigants, the key factor is to find an **entry point or hook through EU law**, primarily the Treaties, Regulations and Directives – and once this is found the Charter can be engaged. Experts have described this relationship like that of a shark and remora fish – where the remora fish (the Charter) attaches itself to the shark (EU law) and forms a mutually beneficial symbiotic relationship.[27] In the same way, the Charter is able to attach itself to a vast and increasing body of EU law with significant effect.

Finally, the Charter binds EU institutions as well as offices and agencies of the EU in the exercise of all their competences and powers. For EU institutions, this is the case even when they 'act outside the EU legal framework'.[28]

In conclusion the Charter applies in three key circumstances:

- **directly** when Member States are implementing EU law;
- **indirectly** when Member States are implementing an area governed by EU law; and
- in relation to the **EU institutions** themselves in the exercise of all their competences and powers.

27 As described by Professor John Morijn in courses on the application of the Charter.

28 CJEU Joined Cases C-8/15 P to C-10/15 P, Ledra Advertising Ltd and Others [2016].

III.4. COMPLIANCE WITH THE CHARTER

When the Charter is applicable – as set out above - national courts are obliged to comply with the Charter and interpret national measures in conformity with the Charter. Conversely, laws that conflict with the Charter must be rendered inapplicable. Where Charter provisions are sufficiently precise and unconditional, they consequently have a **direct effect.**[29] This direct effect allows individuals to invoke the Charter in proceedings before national courts and allows for the application of rights that are not specifically set out in national law.

In certain circumstances, the Charter may also generate a **horizontal effect**, or obligations between private parties as seen, for example, in several non-discrimination cases where the CJEU ruled that national courts should set aside national legislation that is contrary to the general principle of non-discrimination based on age.[30]

The Charter can also be used to **assess EU laws** – namely decisions, directives and regulations, as it has the status of primary law (equal to the EU Treaties). For example, in the 2014 case of Digital Rights Ireland (C-293/12) the CJEU declared the EU Data Retention Directive to be invalid, considering it incompatible with Articles 7 and 8 of the Charter on respect for private and family life and the protection of personal data. The CJEU held that the Directive entailed wide-ranging and particularly serious interference with fundamental rights rather than interference that was limited to what was strictly necessary.[31]

III.5. LITIGATION AVENUES

There are two main avenues for litigation before the CJEU: the preliminary reference procedure and the infringement procedure.

The **preliminary reference procedure** allows a national court to refer a question to the CJEU to clarify an area of EU law. A reference for a preliminary ruling may be addressed to the CJEU at any stage of the proceedings and does not imply the need to have previously exhausted any remedy available at national level, unlike claims brought before the European Court of Human Rights. The procedure allows any national court to refer questions to the CJEU on either the interpretation of EU law or the validity of EU acts.

Once the CJEU judgment is rendered the national court will be bound by the judgment and will use the response to its preliminary question to interpret and apply EU law in the ongoing case. Subsequently, the guidance from the CJEU is binding on any other court in all Member States.

29 *Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration*, (CJEU, Case 26-62) [1963].

30 *Werner Mangold v. Rüdiger Helm [GC], (CJEU, C-144/04) [2005]; Seda Kücükdeveci v. Swedex GmbH & Co. KG [GC],* (CJEU, C-555/07) [2010].

31 *Digital Rights Ireland Ltd v. Minister for Communications, Marine and Natural Resources and Others, [GC]* (CJEU, (C-293/12)) [2014].

For human rights practitioners to engage and influence the reference procedure, it is necessary to be involved in the case from the beginning of the proceedings. In this way, arguments based on the Charter can be incorporated in the pleadings and the lawyer can propose that a question be referred to the CJEU, drafting a model that convinces the court, which it may directly use. If they are not involved in the case, civil society organisations might provide more informal support to the litigating lawyer.

The **infringement procedure** allows the European Commission to bring a case against a Member State challenging the application of EU law as set out in Article 258 of the Treaty on the Functioning of the European Union (TFEU). This is normally a case in which a Member State has not correctly transposed an EU law, where national legislation infringes EU law or where there is a systematic failure to implement EU law. In very rare circumstances a Member State may bring a case against another Member State, which is provided for under Article 259 TFEU.

Within the infringement procedure the function of human rights practitioners is more of an advocacy role, but this can still be powerful. A formal complaint can be submitted to the Commission detailing the violation of EU law. This should be followed up with advocacy to persuade the Commission to take action and demonstrate why EU law has been violated.

Also rare is the possibility for a natural or legal person to bring a **direct action** before the CJEU. This is only possible in order to challenge legally binding acts of EU institutions and bodies in three circumstances: actions for annulment of an act adopted by an EU institution, body, office or agency; actions for failure to act by an EU institution, body, office or agency; and actions for damages, to establish the EU's liability and possibly seek compensation.

IV. THEMATIC DIMENSIONS OF USING THE EU CHARTER AS A LITIGATION TOOL

IV.1. Rule of law

With the advent of rights-based cases before the CJEU, the rule of law came to the fore and the rights articulated in Article 2 of the Treaty of the European Union began to be considered by the CJEU judges. Article 2 sets out the broad foundations on which the EU is built:

> *"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."*

While it is a founding value of the EU, the definition of the rule of law has been contested by Member States. The European Commission has argued that it is a well-defined principle, but Member State governments, especially those accused of systemic rule of law failures, have claimed that the rule of law is neither defined in EU law, nor can it be defined in EU law.[32]

The European Commission[33] states that the rule of law can be defined along six core principles: **legality**, implying a transparent, accountable, democratic and pluralistic process for enacting laws; **legal certainty; prohibition of the arbitrary exercise of executive power; effective judicial protection** by independent and impartial courts with effective judicial review including respect for fundamental rights; **separation of powers**; and **equality before the law**. Further, in deciding on the structure of the European Commission's annual Rule of Law Reports, four pillars were agreed on: the **justice system**, the **anti-corruption framework, media pluralism** and other institutional issues related to **checks and balances.**

The Venice Commission of the Council of Europe has developed a rule of law checklist[34] designed to provide a dynamic framework to assess the rule of law based on the understanding that the rule of law requires a system where laws are foreseeable, people are treated with dignity and equality and decisions can be challenged before an independent impartial tribunal.

IV.1.1.Trajectory from a missed opportunity to Article 2

Despite the Commission's overarching defence of the rule of law, historically it has been reluctant to address systemic failures of the rule of law, preferring a surgical approach to individual violations through cases before the CJEU. For example, in relation to Hungary, the European Commission refused to recognise a widespread and systematic breach of the rule of law, and left it to the European Parliament to call a vote that proposed, in accordance with Article 7 of the Treaty of the European Union, the determination that Hungary is at risk of breaching the EU´s founding values.[35]

Even through infringement proceedings the Commission and the CJEU have been slow to systematically incorporate Charter rights. Cases have predominantly addressed judicial independence in Poland and rights related to civic freedoms and non-discrimination in Hungary. One of the first cases, in 2012, examined the early retirement age of judges in Hungary, a decision that appeared to be intended to replace judges with people loyal to the government. The CJEU

32 L. Pech, "The Rule of Law as a Well-Established and Well-Defined Principle of EU Law," *Hague Journal on the Rule of Law 14* (2022): 107–138. https://doi.org/10.1007/s40803-022-00176-8

33 https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/what-rule-law_en

34 Venice Commission Rule of Law Checklist. See: https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf

35 European Parliament Press Release 12/09/2018 https://www.europarl.europa.eu/news/en/press-room/20180906IPR12104/rule-of-law-in-hungary-parliament-calls-on-the-eu-to-act

found that the change constituted a breach of EU age discrimination provisions under the Equality Framework Directive.[36] However, it did not address the fact that the forced retirement of numerous judges raises concerns about the independence of the judiciary. Thus, from a rule of law perspective the judgment was widely perceived as a **missed opportunity** despite advice from the Venice Commission and the Advocate General.[37]

Subsequent cases from Poland elaborated key elements of the independence of the judiciary, in particular through the mobilisation of Article 19 TEU and Article 47 of the Charter which require national courts to uphold EU law and ensure the right to an effective remedy and a fair trial. The Hungarian cases have ranged from freedom of association to media freedom and broader questions of the rule of law. In 2025, for the first time, the CJEU is considering two important questions on the justiciability of Article 2 as part of the case against Hungary regarding restricted access to LGBTQI+ content (Case C-769/22). The case examines first whether Article 2 can serve as a self-standing ground for an infringement action, and second, the standards for identifying the values of Article 2.

On 5 June 2025 the Advocate General's opinion[38] set out that the Court should establish a self-standing infringement of Article 2 in cases where the Member State has breached a Charter right because it has negated the value of that right. In this case disrespect and marginalisation of a group in a society are the 'red lines' imposed by the values of equality, human dignity and respect for human rights.[39]

IV.1.2.Entry points

The key entry points for rule of law cases include possible violations of:

- **Article 2 TEU** – on the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights;
- **Article 19 (1) TEU** – which requires Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law; and
- **Four freedoms under the TFEU** – on freedom of movement of goods, persons, services and capital.

Further entry points are in several areas under key EU Regulations and Directive, including:

- **Equality laws** such as the Equality Framework Directive and the Race Equality Directive;

36 Equality Framework Directive (2000). See: https://eur-lex.europa.eu/eli/dir/2000/78/oj/eng

37 For further analysis see Gábor Halmai, The Early Retirement Age of the Hungarian Judges, (Cambridge, Cambridge University Press, 2017). Available at SSRN: https://ssrn.com/abstract=2985219

38 Advocate General's Opinion in Case C-769/22 | Commission v Hungary ('Values of the European Union'). See https://curia.europa.eu/jcms/upload/docs/application/pdf/2025-06/cp250064en.pdf

39 European Commission v. Hungary, (CJEU, AG Opinion C-769/22) [2025] para 248.

- **Data and Technology laws** such as the General Data Protection Regulation (GDPR), Digital Services Act (DSA) and - as it becomes fully applicable - the AI Act; and
- **Media laws** including the Audiomedia Visual Services Directive, e-Commerce Directive and - once they become fully applicable - the EMFA and the anti-SLAPP Directive.

Once EU law is engaged in these or other areas, rights under the Charter can be considered, including:

- **Freedoms** including those under Articles 11, 12 and 13 on freedom of expression, information, association, assembly and freedom of the arts and sciences;
- **Equality Rights** under Articles 20 to 26;
- **Citizens' Rights** including right to good administration under Article 41; and
- **Justice** including Article 47 on the right to an effective remedy and to a fair trial.

IV.1.3. Cases

Commission v Hungary (C-78/18)[40]

This case addressed legislation in Hungary that restricted foreign funding to civil society organisations and introduced several measures purportedly aimed to improve the transparency of civil society organisations.

The Court found in 2020 that the Hungarian authorities had *"introduced discriminatory and unjustified restrictions on foreign donations to civil society organisations."* Through the lens of free movement of capital the court found a violation of freedom of association, the right to privacy and the protection of personal data. Significantly the judgment recognized the chilling effect of such laws that bolster intimidation campaigns and foster a climate of distrust in the work of associations and recognised that the right to freedom of association *"constitutes one of the essential bases of a democratic and pluralist society."*

Key EU Law Entry Point: Article 63 TFEU on free movement of capital.

Key Charter Rights: Articles 7, 8 and 12 on the right to privacy, protection of personal data, and freedom of association.

40 *Commission v. Hungary (*C-78/18). See http://curia.europa.eu/juris/document/document.jsf?text=&docid=227569&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=6154421

Judicial Independence Cases

Disciplinary Regime for Judges C-719/19[41] addressed numerous concerns about the new disciplinary regime for judges, including investigations based on the content of judgments, failure to ensure impartiality of the composition of the Disciplinary Chamber, limited due process and defence rights. The Court found that Poland had failed to guarantee the independence of the Disciplinary Chamber.

Reform of the Courts C-204/21[42], informally known as the 'Muzzle Law' in which court reform aimed to dissuade or punish Polish judges for applying and upholding EU rule of law requirements. The Court held that the law was incompatible with the fundamental right to effective judicial protection, the respect for private life, the protection of personal data, the principle of primacy of EU law and the functioning of the preliminary ruling mechanism.

These cases built on one of the first judicial independence cases, ***Associação Sindical dos Juízes Portugueses C-64/16.***[43] The case was the result of a preliminary reference that asked whether measures to cut the salaries of judges were compatible with the principle of judicial independence under Article 19(1) TEU and Article 47 of the Charter. The judgment established a general obligation for Member States to respect the independence of their courts, specifically stating that *"the very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law."*

Key EU Law Entry Points: Article 19(1) TEU on effective legal protection, Article 267 TFEU on the right to seek a preliminary ruling and the GDPR.

Key Charter Rights: Article 47 on the right to an independent and impartial tribunal and Articles 7 and 8 and the right to privacy and protection of personal data.

***Alekszij Torubarov v. Bevándorlási és Menekültügyi Hivatal* C-556/17**[44]

This case was the result of a preliminary reference from a Hungarian judge regarding the decisions of an administrative authority, such as the Immigration and Asylum Office, which refused to comply with judicial rulings. The CJEU concluded that the Hungarian law, which prevented the national courts from enforcing their decisions, was contrary to EU law, particularly the right to an effective remedy under Article 47 of the Charter. The CJEU emphasised that while EU law did not prescribe a specific procedure, national courts had to examine the applications *ex nunc* and fully.

Key EU Law Entry Points: Common procedures for granting international protection — Directive 2013/32/EU.

Key Charter Rights: Article 47 on the right to an independent and impartial tribunal.

41 *Commission v. Poland* (C-791/19) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62019CJ0791

42 *Commission v. Poland* (C-204/21) https://curia.europa.eu/juris/document/document.jsf?text=&docid=274364&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=277733

43 *Associação Sindical dos Juízes Portugueses* (C-64/16) https://curia.europa.eu/juris/liste.jsf?num=C-64/16

44 *Alekszij Torubarov v Bevándorlási és Menekültügyi Hivatal* (C-556/17) https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-556/17

IV.2. CLIMATE/ENVIRONMENT

The CJEU has a longer history of climate/environmental litigation, having heard 60 cases over the 17-year period from 2005 to 2022. Over two-thirds of those cases relate to the EU's Emissions Trading System (ETS) while others cover a broad range of climate issues. Very few, however, invoke the Charter, reflecting the siloed spaces within which the human rights and environmental fields evolved. With precise obligations set out in EU climate law, further arguments based on the Charter were not considered, or not deemed to add further clarity.

In recent years, however, there has been growing momentum, particularly following the Paris Agreement in 2015 and the recognition of the right to a healthy environment through a UN resolution in 2022.[45] Around the same time the first climate cases were brought before the ECtHR. This prompted further exploration of interlinkages and how a rights-based approach can amplify climate litigation, in particular addressing underlying issues such as accountability, access to information and equal access to justice.

Further strengthening the EU's legal base is the Aarhus Convention,[46] a UN convention on access to information, public participation in decision-making and access to justice in environmental matters. The EU and the Member States are state parties opening further avenues for protection – particularly enabling individuals and organizations to challenge decisions that contravene environmental law. Following a narrow remit, this was expanded in 2021 through an amendment to the Aarhus Regulation, enabling NGOs and individuals to challenge a broader range of EU decisions than was previously possible.[47]

Articles 2 and 3 of the Charter on the right to life and the right to physical and mental integrity have potential, especially given their proximity with ECHR and ECtHR case law. Important but again under-utilized is a dedicated article in the Charter on environmental protection for which no parallel exists in the ECHR. Article 37 states:

> *"A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development."*

45 UN Resolution on the Right to a Clean, Healthy and Sustainable Environment (A/Res/76/300) See https://docs.un.org/en/A/RES/76/300

46 UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) See https://unece.org/environment-policy/public-participation/aarhus-convention/text

47 See further: https://www.clientearth.org/latest/news/we-have-claimed-access-to-the-courts-for-people-across-the-eu/#:~:text=Unfortunately%2C%20access%20to%20justice%20is,to%20members%20of%20the%20public.%22

IV.2.1. First elaboration of Article 37

In 2024, for the first time, the CJEU articulated the link between EU environmental law and the application of the Charter in a case (see below) involving the health impacts of pollution. The Court stated:

> *"Having regard to the close link between the protection of the environment and that of human health, Directive 2010/75 seeks to promote not only the application of Article 37 of the Charter, as stated in recital 45 of that directive, but also the application of Article 35 of the Charter, it not being possible to achieve a high level of protection of human health without a high level of environmental protection, in accordance with the principle of sustainable development."*

This development has the potential to shape the future of CJEU case law and the inextricable link between environmental protection and Charter rights. It moves from the Charter being simply referenced in environmental cases to Article 37 being used as an interpretative tool.[48] This follows the logic of the Advocate General in an Opinion[49] in 2017 where she stated:

> *"The same principle is also enshrined in Article 37 of the Charter which — again, following the entry into force of the Treaty of Lisbon — forms part of EU primary law and is to be regarded as an interpretative tool of secondary law."*

One limitation of Article 37 is that it is formulated as a *'principle'* instead of a *'right',* meaning that it *"shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality."*

Another reason for the limited Charter-based litigation before the CJEU is the set of very limited standing rules. This was exemplified in the case of *Carvalho*, known as the '*People's Climate Case'* which was declared inadmissible due to a lack of standing.[50] The applicants argued that the EU was failing to sufficiently reduce greenhouse gas emissions in violation of a wide number of Charter rights. The CJEU drew on established case law and claimed that the victims had failed to show that the effects of climate change were unique and different for each individual. Further, on appeal the CJEU also rejected arguments in favour of easier access for members of associations to bring climate cases before the CJEU.[51] Article 47 of the Charter was invoked by the appellants to argue for broader access to judicial review; however, the Court upheld the General Court's position, claiming Article 47 does not guarantee an unconditional right to directly challenge EU legislative acts.

48 See further Jasper Krommendijk, "The Human Right to a Healthy Environment from an EU Charter Perspective," *VerfBlog* (blog), April 8, 2025, https://verfassungsblog.de/ip-hr2he-eu-charter-perspective/, DOI: 10.59704/004f21372d053b5d.

49 Opinion of Advocate General Sharpston 2017 European Commission v Republic of Malta. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62015CC0557

50 *Carvalho and Others v Parliament and Council* (C-565/19) See https://curia.europa.eu/juris/document/document.jsf?text=&docid=239294&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2268371

51 Ibid and see case law in *Plaumann* case.

A pending case before the CJEU may open access to the Court. In June 2025 the European Commission referred the Polish government to the CJEU[52] on the grounds that Polish citizens face too many barriers to access environmental justice. The case relates to the implementation of the Ambient Air Quality Directive and in parallel to the fact that under the Aarhus Convention individual citizens and environmental NGOs must be able to challenge the authorities' decisions or lack thereof if they believe the action taken is insufficient.

By contrast, Charter rights, primarily Articles 16, 17, 20 and 21 on freedom to conduct a business, the right to property, equality before the law and non-discrimination, have primarily been used by companies as a 'shield' to protect their interests against government measures to protect the environment.[53]

IV.2.2. Entry points

There are a wide range of entry points through the EU's body of environmental laws supported by Article 191 TFEU that makes protecting the environment, natural resources and combating climate change an explicit objective of EU environmental policy. This is further supported by Article 3(3) TEU which calls for the internal market to work toward sustainable development and improvement of the quality of the environment. Key areas include:

- **Environmental laws** on combating climate change, biodiversity, land use and forestry, water management, air and noise pollution, chemicals and pesticides, resource efficiency and sustainable consumption;
- **Emissions Trading System** (ETS 2);
- **Due Diligence** including the Corporate Sustainability Reporting Directive (CSRD) and Corporate Sustainability Due Diligence Directive (CSDDD) – following transposition and changes following the Omnibus amendments; and
- **Aarhus Regulation** enabling organisations to challenge EU decisions.

Once EU law is engaged in these or other areas rights under the Charter can be considered, including:

- **Freedoms** including those under Articles 11, 12 and 13 on freedom of expression, information, association, assembly and freedom of the arts and sciences, in particular considering the role of environmental defenders;
- **Environmental protection** under Article 37;
- **Citizens' Rights** including the right to good administration under Article 41; and
- **Justice** including Article 47 on the right to an effective remedy and to a fair trial.

52 Commission Press Release 18/06/2025 https://ec.europa.eu/commission/presscorner/detail/es/ip_25_1509

53 J. Krommendijk and D. Sanderink, "The role of fundamental rights in the environmental case law of the CJEU," *European Law Open*. 2(3) (2023): 616-635. doi:10.1017/elo.2023.30

IV.2.3.Cases

***C.Z. and Others v. Ilva SpA* - C-626/22**[54]

In 2024 the CJEU ruled on a case concerning the health implications of pollution caused by a large iron and steel plant in South Italy. The Court found a violation of Directive 2010/75 on industrial emissions, but also, for the first time, of Articles 37 and 35 on the right to environmental protection and the right to health care.

The Ilva steelworks has been the subject of previous infringement proceedings in 2011 and in the recent case the CJEU also cited case law from the ECtHR, which in the case of *Cordella v. Italy* determined a violation of Article 8 ECHR because of the polluting effects on the environment and human health.

Key EU Law Entry Points: Directive 2010/75 on industrial emissions.

Key Charter Rights: Articles 37 and 35 on the right to environmental protection and the right to health care.

***Client Earth v. the European Commission* T-579/22 – pending**[55]

In this case Client Earth submitted a request to the European Commission for an internal review under the Aarhus Regulation. Following an unsatisfactory response Client Earth brought a case before the General Court, challenging the legality of Delegated Regulation 2021/2139.

The key question is whether the European Commission acted unlawfully by labelling forest biomass and certain bio-based plastics as green investments, in alleged contradiction with the scientific criteria and legal thresholds set out in the Taxonomy Regulation.

Key EU Law Entry Points: Aarhus Regulation, Taxonomy Regulation.

Key Charter Rights: Article 37 and 47 on environmental protection and access to judicial review.

54 *C.Z. and Others v. Ilva SpA* (C-626/22) https://curia.europa.eu/juris/document/document.jsf?text=&docid=287502&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2339996

55 *ClientEarth v Commission* (Case T-579/22) https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62022TN0579:EN:HTML

IV.3. Media freedom

The landscape of laws and policies covering the media within the EU has changed significantly over the past decades, moving from a market-focused approach to one that actively promotes media freedom within the EU.[56] From a legislative perspective the two most significant pieces of legislation, both adopted in 2024, are the European Media Freedom Act (EMFA)[57] which entered fully into force on 8 August 2025 and the Anti-SLAPP Directive, which Member States need to transpose by 7 May 2026.[58] This approach is grounded in Article 11 of the Charter on the right to freedom of expression and recognises the inextricable link between free media and an effective and functioning democracy.

The EMFA focuses on areas such as editorial independence, protection of journalistic sources, the independence of public service broadcasters and the transparency of media ownership. The Anti-SLAPP directive very specifically aims to protect journalists, human rights defenders and others acting in the public interest from abusive legal tactics by ensuring that abusive court proceedings are shut down at the earliest possible stage.

IV.3.1. Article 11 of the Charter

Although direct applications of Article 11 have, so far, been relatively limited in media cases before the CJEU, the Court has demonstrated a growing willingness to interpret fundamental rights broadly in cases involving digital communication and freedom of expression online. In landmark cases such as *Tele2 Sverige AB*[59] and *Digital Rights Ireland*[60] the Court invalidated data retention laws that compromised privacy and freedom of expression, invoking Articles 7, 8 and 11 of the Charter on the respect for private and family life, protection of personal data and freedom of expression.

Despite this gap there is potential to apply the Charter in media-related litigation when contested national measures fall within the domain of EU-regulated sectors. This is especially pertinent in areas such as audiovisual media regulation, data protection, digital platform governance, telecommunications and competition law. For example, the Audiovisual Media Services Directive (AVMSD) imposes obligations on Member States to ensure editorial independence and non-discriminatory licensing procedures. If a national authority's action, for example refusing to renew a broadcast license or imposing disproportionate sanctions, can be linked to the implementation of the AVMSD, the Charter becomes an enforceable standard against which compatibility with fundamental rights can be assessed.

56 See further https://cmpf.eui.eu/grounding-media-freedom-in-the-eu-the-legal-basis-of-the-emfa/

57 European Media Freedom Act 2024 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:4743093

58 Directive on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (2024) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401069

59 Tele2 Sverige AB https://curia.europa.eu/juris/liste.jsf?num=C-203/15

60 Digital Rights Ireland https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62012CJ0293

Civil society and media organisations have submitted several complaints[61] to the European Commission on media freedom but to date infringement proceedings were only launched in one case – the Klubradio case in Hungary where the radio station's licence was not renewed.

Article 11 has been used – sometime as a shield - to challenge exceptions to copyright laws under the InfoSoc Directive (*Spiegel Online GmbH v. Volker Beck*), to challenge the enforcement of a defamation case (*Real Madrid Club de Fútbol, AE v. Société Éditrice du Monde SA*) and to challenge legislation restricting the ability to acquire media companies (*Vivendi SA v. Autorità per le Garanzie nelle Comunicazioni*). In all cases the CJEU held that in assessing the scope of exceptions or restrictions it should be ensured that freedom of expression is not unduly restricted.

IV.3.2. Entry Points

The key entry points for media freedom cases include possible violations of:

- **Article 2 TEU** – on the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights; and
- **Four freedoms under the TFEU** – on freedom of movement of goods, persons, services and capital.

And several areas under key EU Regulations and Directives, including:

- **Media laws** including the Audiomedia Visual Services Directive, e-Commerce Directive and once they become fully applicable the EMFA and the Anti-SLAPP Directive;
- **Data and Technology laws** such as the GDPR, DSA and as it becomes fully applicable the AI Act; and
- **Competition laws and Anti-Money Laundering legislation.**

Once EU law is engaged in these or other areas, rights under the Charter can be considered, including:

- **Freedoms** including under Articles 11, 12 and 13 on freedom of expression, information, association, assembly and freedom of the arts and sciences and Articles 7 and 8 on the right to private and family life and the protection of personal data; and
- **Principles of Equal Treatment** Articles 20 and 21 on the principle of equal treatment.

61 See further: https://www.ecpmf.eu/fact-finding-mission-hungary-2019/

IV.3.3. Cases

Klubradio case – pending[62]

In this case the Commission alleges that Hungary is in breach of EU law by applying disproportionate and non-transparent conditions to the renewal of Klubradio's rights to use of radio frequencies as these should be assigned on the basis of objective, transparent, non-discriminatory and proportionate criteria. The Commission also references freedom of speech as elaborated under the Charter.

In April 2025 the Advocate General found that the Hungarian Media Council had breached the principle of proportionality in its refusal to renew the licence.

Key EU Law Entry Points: European Electronic Communications Code.

Key Charter Rights: Article 11 on the right to freedom of expression.

LGBTIQ+ case (pending)[63]

In this case the European Commission considers that various amendments to Hungarian laws that prohibit the sharing of LGBTIQ+ -related information with minors in advertising, media, schools, bookshops and even within families violates the internal market rules and the fundamental rights of individuals (in particular LGBTIQ+ people).

The laws contain provisions which are not justified or are disproportionate to achieve the stated objective of protecting minors. The Commission identified violations of several EU directives, including the Audiovisual Media Services Directive and the Single Market Transparency Directive alongside violations of Article 2 and the Charter.

This is the first time that the Commission and the Advocate General have argued for a self-standing infringement of Article 2. The Opinion looks at the rights under Article 2 and whether *'red lines'* have been crossed, highlighting that the "disrespect and marginalisation of a group in a society are the *'red lines'* imposed by the values of equality, human dignity and respect for human rights."

Key EU Law Entry Points: Audiovisual Media Services Directive, e-Commerce Directive, Services Directive, Single Market Transparency Directive and Article 2 TEU.

Key Charter Rights: Articles 1, 7, 8, 11 and 21 on the inviolability of human dignity, the right to freedom of expression and information, the right to private and family life as well as the right to non-discrimination.

62 Commission Press Release https://ec.europa.eu/commission/presscorner/detail/es/ip_22_2689

63 Commission Press Release https://ec.europa.eu/commission/presscorner/detail/es/ip_22_2689

***Vivendi SA v. Autorità per le Garanzie nelle Comunicazioni*[64]**

This case involved a French media company that launched a hostile acquisition campaign for shares in an Italian company operating in the same sector. The Italian company lodged a complaint accusing the French company of infringing a provision in Italian law which aims to safeguard media pluralism.

The Court observed that a restriction on freedom of establishment may, in principle, be justified by an objective of general interest, such as the protection of media pluralism. However, in this case the law was not appropriate for achieving that objective.

The Court concluded that the Italian provision sets thresholds which bear no relation to the risk to media pluralism, since those thresholds do not make it possible to determine whether and to what extent an undertaking is actually in a position to influence the content of the media.

Key EU Law Entry Points: Free Movement of Establishment Article 49 TFEU.

Key Charter Articles: Article 11 on freedom of expression and information.

IV.4. Equality

The field of equality and non-discrimination saw some of the first groundbreaking cases for the protection of rights before the CJEU. This is partially due to the specificities of this area of EU law, marked by the existence of a provision prohibiting sex discrimination in the work context since the 1950s, the link between employment rights and free movement, allowing individuals to rely on equal treatment to claim rights,[65] and the existence since 1997 of a provision explicitly allowing the EU legislator to enact instruments in the field of non-discrimination.[66] However, there are also significant gaps in the legal framework, which is characterised by a de facto 'hierarchy of grounds', as the scope and level of protection depends on the grounds of discrimination.

Discrimination on grounds of **nationality** is articulated in the treaties. The TFEU prohibits discrimination on grounds of nationality under Articles 18 and 21. The free movement of workers is guaranteed under Article 45 and through the Free Movement Directive 2004/38/EC, in which the prohibition of discrimination based on nationality is repeated. Discrimination on grounds of **race and ethnic origin** is also covered by the Race Equality Directive 2000/43/EC.

64 *Vivendi SA v. Autorità per le Garanzie nelle Comunicazioni* https://curia.europa.eu/juris/document/document.jsf?text=&docid=230608&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1375003

65 See for instance the Judgment of the Court of 17 April 1986, in the case, *State of the Netherlands v Ann Florence Reed,* (C-59/85, ECLI:EU:C:1986:157) [1986].

66 Article 19 of the Treaty on the Functioning of the European Union (ex-Article 13 TEC) confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article.

Discrimination on grounds of **sex** is also covered by EU primary and secondary law in a wide range of areas including: employment, social protection, education and access to goods and services available.[67]

Discrimination on other grounds, including religion or belief, disability, age or sexual orientation are not fully protected and only covered in the areas of employment and occupation. There was an attempt to close these gaps through the Horizontal Equality Directive, proposed by the European Commission in 2008. The Directive would have extended protection against discrimination on grounds of age, disability, sexual orientation or religious belief outside the labour market. For years the legislative process was stuck with several Member States blocking progress. In early 2025, despite some recent signs of progress, the proposal was abruptly withdrawn by the Commission. While frustrating, this may be an opportunity to re-visit the proposal and formulate a more up-to-date version.

IV.4.1.Unrealised potential following precedent setting cases

Over the last seven years there have been several precedent setting equality cases before the CJEU primarily based on the right to free movement. However, their impact has been diminished because of their limited implementation.

The *Coman case*[68] is one of the recent cases that confirms equal rights under EU law. It involved a same-sex couple who were legally married in Belgium: the case affirmed that EU law can override national laws in the context of free movement and family reunification. In this case the judgment required Romania to recognise same-sex marriages for the purpose of granting residence rights, ruling for the first time on the definition of a 'spouse'.

The case was followed by the *Baby Sara*[69] case which further emphasized that a Member State must recognise a birth certificate issued by another Member State, in this case issued to the child of same-sex parents, to allow the child to exercise her EU citizenship rights, in particular, the right to free movement.

While both cases set legal precedent, ensuring implementation of the judgments has been a challenge. Romania still hasn't granted residence to Mr. Hamilton and while the Sofia district court initially ordered Baby Sara be granted a birth certificate, the Supreme Administrative Court overturned the decision.

67 The relevant treaty provisions are Article 153 TFEU and Article 157 TFEU (equal pay for male and female workers for equal work or work of equal value). The EU legislator adopted several relevant instruments, in particular Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ [2004] L373/37) and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ [2006] L204/23).

68 *Coman and Others v Inspectoratul General pentru Imigrări* (Case C-673/16) https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-06/cp180080en.pdf

69 *V.M.A. v Stolichna obshtina, rayon "Pancharevo" Baby Sara Case* (C-490/20) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62020CJ0490

Other cases have involved workplace discrimination relying on the Employment Equality Directive. In the case of *Achbita*[70] the CJEU found no direct discrimination based on a workplace limitation on wearing religious symbols, in this case a headscarf. The national court reaffirmed the employer's policy of "neutrality", which has been criticized by human rights organisations[71] citing that the justification of "neutrality" fails to recognise the racialization of Muslims within a growing context of Islamophobia and that such 'bans' target and/or disproportionately impact Muslim women.

IV.4.2.Entry points

The key entry points for equality cases include possible violations of:

- **Article 2 TEU** – on the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights; and
- **Four freedoms under the TFEU** – on freedom of movement of persons, goods, services and capital.

And several areas under key EU Regulations and Directives including:

- Race Equality Directive 2000/43/EC;
- Employment Equality Directive 2000/78/EC;
- Gender Equal Access to Goods and Services Directive 2004/113/EC
- Gender Recast Directive on Discrimination in Employment 2006/54/EC; and
- Free Movement Directive 2004/38/EC.

Once EU law is engaged in these or other areas, rights under the Charter can be considered, including:

- **Principles of Equal Treatment** Articles 20 and 21 on equality before the law and non-discrimination, Article 22 on cultural, religious and linguistic diversity, Article 23 on equality between men and women, Article 24 on the rights of the child, Article 25 on the rights of the elderly and Article 26 on integration of persons with disabilities.

70 *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* (C-157/15) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62015CJ0157

71 See for example the Open Society Justice Initiative https://www.justiceinitiative.org/litigation/achbita-v-belgium

IV.4.3. Cases

***Coman and Others v Inspectoratul General pentru Imigrări* C-673/16**

This case involved a same-sex couple - Adrian Coman, a Romanian national and his American husband Robert Hamilton - who sought residence rights in Romania based on their marriage, which was legally recognised in Belgium. Romanian authorities refused, claiming the term *"spouse"* under national law applied only to opposite-sex couples.

In 2018 the CJEU ruled that under the Free Movement Directive the term *"spouse"* includes same-sex spouses and so EU Member States must recognize such marriages for the purpose of granting residence rights, even if they do not allow same-sex marriage domestically. The CJEU emphasized that the refusal violated Articles 7 and 21 of the Charter of Fundamental Rights, the right to private and family life and the prohibition of discrimination.

Key EU Law Entry Points: Free Movement Directive.

Key Charter Rights: Articles 7 and 21 on the right to private and family life and non-discrimination.

***V.M.A. v Stolichna obshtina, rayon "Pancharevo"* Baby Sara Case C-490/20**

Baby Sara was born in Spain and issued a Spanish birth certificate listing two mothers (a Bulgarian and a British citizen). When the Bulgarian mother sought to register Sara in Bulgaria she was refused on the basis that same-sex parenthood is not recognised under Bulgarian law.

In 2021 the CJEU held that Bulgaria must issue an identity document without requiring a change in the birth certificate, as a refusal to do so would undermine the child's rights as an EU citizen, especially the right to free movement under Article 21 TFEU. In this case the rights under the Charter and the best interests of the child were important.

Key EU Law Entry Points: Article 21 TFEU and the Free Movement Directive.

Key Charter Rights: Articles 7, 24, 21 and 45 on the right to private and family life, the rights of the child, non-discrimination and freedom of movement and residence.

***Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* (C-157/15)**

Samira Achbita, a Muslim woman employed by Belgian company G4S, was dismissed for wearing a headscarf at work. G4S claimed that any visibly political, philosophical, or religious signs would violate the company's aspiration of "neutrality".

In 2017 the CJEU found that G4S's restriction did not constitute direct discrimination. It found that such an internal rule may constitute indirect discrimination if it results in persons adhering to a particular religion or belief being put at a particular disadvantage, unless the means are justified by a legitimate aim and the means are appropriate and necessary.

Following the CJEU's answer the Antwerp Labour Court concluded that the employer's policy of neutrality was not inherently discriminatory as it applied equally to all employees, and it justified the legitimate aim of maintaining neutrality.

Key EU Law Entry Points: Equality Framework Directive.

Key Charter Rights: Article 10 on freedom of thought, conscience and religion.

V. CONCLUSION

These four areas show a slow but evolving application of the Charter of Fundamental Rights in cases before the CJEU. From early missed opportunities, such as the case on the retirement age of judges in Hungary, more recent cases have proactively included Charter rights as a central part of the case. A number of key elements emerge:

- The first definitively rights-based case before the CJEU was the case of the *Commission v. Hungary* on the NGO law. While the entry point into EU law was the free movement of capital, the judgment clearly articulated the right to freedom of association. This case has been built upon, but not fully consistently. For example, in the subsequent case of the *Commission v. Hungary* (C-821/19) on the criminalisation of assistance to migrants the CJEU found Hungary to be in violation of EU law but did not include association violations of the Charter, namely on freedom of association and expression;
- A landmark case is awaited focusing on the justiciability of Article 2, looking first at whether Article 2 can serve as self-standing grounds for an infringement action and second at the standards for identifying the values of Article 2;
- While the CJEU has a long history of environmental cases it was only in 2024 that, for the first time, the CJEU articulated the link between EU environmental law and the application of the Charter in a case involving the health impacts of pollution; and
- While there have been several groundbreaking cases on equality rights, they have been mired with challenges regarding implementation of the judgments.
- In the field of non-discrimination the CJEU has sometimes relied on the provisions of the Charter to ensure the protection of fundamental rights in horizontal disputes, circumventing the limits in the application of the EU Equality Directives[72]

2025 marks 25 years since the proclamation of the Charter and 16 years since it entered into force nine years later in 2009. If the Charter is to be an effective instrument for the protection of rights across the EU there needs to be more proactive and consistent application through upcoming cases as well as a strong focus on the tools needed to ensure the implementation of judgments.

The evolving case law of the Court of Justice of the European Union demonstrates both the potential and the limitations of the Charter of Fundamental Rights as a tool for rights protection. While the Charter has been successfully invoked in cases concerning rule of law, equality, media freedom and climate litigation, its application remains inconsistent. Some judgments have

72 See also the cases Mangold (Case C-144/04 [2005] ECLI:EU:C:2005:709) and Kücükdeveci (Case C-555/07 [2010] ECLI:EU:C:2010:21), and the analysis offered by L. Cechetti in L. Cechetti, "Unravelling horizontal direct effect in EU law: the case of the fundamental right to paid annual leave between 'myth' and 'practice'," *Yearbook of European Law,* 42 (2023): 42–83.

articulated rights-based standards with lasting effect, while others have avoided engaging with the Charter even where clear violations were apparent. The pending cases on the justiciability of Article 2 TEU and access to environmental justice are likely to shape the next stage of this jurisprudence, with the potential to strengthen the role of the Charter in upholding the Union's founding values.

For legal practitioners, the Charter's utility lies in its capacity to operate as an instrument of primary law when strategically connected to EU legislation or treaty provisions. Identifying the appropriate entry points into EU law is therefore essential to activating Charter protections, while consistent follow-up on the implementation of judgments remains crucial to ensure their effectiveness in practice. As the Charter marks twenty-five years since its proclamation, it is incumbent upon the legal community to engage with it more systematically and to deploy it proactively in strategic litigation, thereby reinforcing its role as a cornerstone of the Union's rule of law framework.

ANNEXES

Annex 1. Rule of Law related case law databases

CJEU

Case number

C-556/17

Decision date

29.07.2019.

Deciding Body

Court of Justice of the European Union

Parties

Alekszij Torubarov v. Bevándorlási és Menekültügyi Hivatal (Immigration and Asylum Office, Hungary)

Facts

In 2013, a Russian businessperson Mr Alekszij Torubarov, who had been engaging in opposition political activities in Russia, illegally crossed the border and sought asylum in Hungary. Since 2008 he had faced several criminal proceedings in Russia. First in 2014 the Hungarian Immigration and Asylum Office (IAO) found Mr Torubarov's application unfounded and rejected it. Mr Torubarov appealed. The Administrative and Labour Court of Pécs annulled the IAO's decision and ordered a new procedure. The court found that the IAO's decision was unfounded. In 2016 the IAO rejected his asylum claim again, disregarding the court's guidance. On the appeal of Mr Torubarov the court annulled the IAO's decision again. The court considered that Mr Torubarov had reasons to fear persecution and serious harm in Russia on account of his political opinions. Still, in 2017 the IAO rejected Mr Torubarrov's application once again. During the third judicial procedure the court decided to submit a request to the Court of Justice of the European Union (CJEU) for a preliminary ruling. First, the court pointed out that since 2015 the administrative court's power to vary administrative decisions on international protection had been withdrawn. As such, courts could only annul the decisions of the administrative authorities and order a new procedure. The court sought to clarify whether under the relevant provisions of EU law national courts had the power to vary administrative decisions of the competent asylum authority refusing international protection, and to grant such protection.

Procedural history

In Hungary, the asylum process is governed by the Act LXXX of 2007 on Asylum and involves multiple administrative stages, with judicial oversight. When an individual applies for international protection, the Hungarian Immigration and Asylum Office is the primary decision-making authority. If the IAO rejects an application for asylum, the applicant has the right to challenge the administrative decision before an administrative court, such as the Administrative and Labour Court of Pécs as in Torubarov's case. The court reviews the legality of the IAO's decision and may either confirm the rejection or annul the decision, ordering a reassessment. However, under Hungarian law at the time, the court itself could not vary the administrative decision and grant asylum directly. This legal limitation created a deadlock in cases where the IAO repeatedly failed to comply with the judicial rulings.

Legal issue

The central legal issue in Case C-556/17 was whether under EU law a national court had the power to grant asylum directly when an administrative authority - such as the Hungarian Immigration and Asylum Office - repeatedly refused to comply with judicial rulings. Under Hungarian law at the time, courts could only annul administrative decisions but could not vary the authorities' decisions and grant international protection directly. This created a legal deadlock, as the IAO continued to reject asylum applications despite the court-ordered reconsideration and, in essence, refused to grant protection to Mr Torubarov.

Decision

In Case C-556/17, the CJEU, in essence, ruled that the Hungarian law which prevented the national courts from enforcing their decisions that acknowledged meeting the criteria of asylum under EU law was contrary to EU law, particularly the right to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union. The Court held that when an administrative authority, such as the Hungarian Immigration and Asylum Office, refused to comply with the judicial rulings, national courts had to substitute their decisions and grant international protection directly. The CJEU emphasised that while EU law did not prescribe a specific procedure, national courts had to examine the applications ex nunc and fully. National law could grant administrative bodies the right to rule on the applications after the decision of the courts, but the right to an effective remedy would be illusory if the decisions of the national courts could be neglected by the administrative bodies during the repeated procedure.

Role of the Charter in the reasoning

The CJEU interpreted EU law in light of the right to an effective remedy, enshrined in Article 47 of the Charter. The Administrative and Labour Court of Pécs, which referred the case to the CJEU, explicitly invoked Article 47, questioning whether the Hungarian legal framework - which prevented courts from enforcing their decisions on, in essence, granting asylum directly - was compatible with the Charter's requirement that judicial remedies must be effective. The referring Hungarian court argued that if national courts could not directly grant asylum when administrative authorities refused to comply with their rulings, asylum seekers would be denied an effective remedy, rendering the judicial process meaningless.

Impact of the decision

Prior to this decision, Hungarian courts were limited to annulling administrative decisions without the power to grant asylum directly. This often led to a cyclical "ping-pong" between the Immigration and Asylum Office and the judiciary, where asylum applications were repeatedly denied despite court annulments, neglecting their findings. The CJEU's judgment in essence empowered - and required - courts to directly grant international protection when administrative bodies failed to comply with judicial judicial decisions, effectively ending this procedural deadlock. In short, after the first round of examination by the court, the national administrative body had to follow the court's ruling. If it failed to do so without invoking new facts, on the appeal of the applicant, the national court for the second time had to substitute the administrative decision with its own.

Implementation of the decision

Following the CJEU's ruling in July 2019, which empowered - and in essence required - national courts to grant asylum directly when administrative authorities failed to comply with judicial decisions, the Administrative and Labour Court of Pécs, implementing the CJEU's judgment, granted refugee status to Mr Torubarov. This decision effectively ended a six-year legal procedure marked by repeated administrative refusals and neglect of judicial decisions. This landmark judgment not only granted Mr Torubarov the protection that he sought but also set a precedent within the Hungarian legal system, reinforcing the authority of courts in similar cases to uphold the right to an effective remedy as enshrined in Article 47 of the EU Charter of Fundamental Rights.

Link

https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62017CJ0556

Case number

Joined Cases C-558/18 and C-563/18

Decision date

20.03.2020.

Deciding Body

Court of Justice of the European Union

Parties

C-558/18 Miasto Łowicz v Skarb Państwa - Wojewoda Łódzki; C-563/18 Prokurator Generalny v. VX, WW, XV

Facts

The two cases, joined by CJEU, concerned in essence Polish judicial reforms, in particular the new disciplinary regime. The Polish legislature changed the selection process of the members of the National Council of the Judiciary (KRS), empowering the Polish lower house (Sejm) to elect fifteen judicial members, the majority of the KRS. The KRS proposed the members of the Izba Dyscyplinarna Sądu Nawyższego (Disciplinary Chamber of the Supreme Court, Poland) to the President of Poland for appointment. In the two cases the referring courts argued that it was likely to deliver unfavourable decisions (for example, for the State Treasury in case C-558/18) which could lead to disciplinary proceedings against the adjudicating single judges, according to the new rules. The referring courts expressed their concerns with regard the objectivity and impartiality of disciplinary proceedings. Also, the referring courts argued that disciplinary proceedings granted to the legislature and the executive gave them the means to remove judges whose decisions displeased them. This accordingly gave them the means to influence judicial decisions through the deterrent effect that the prospect of such proceedings has on such persons.

Procedural history

In in Case C-558/18, the town of Łowicz brought proceedings against the State Treasury before the Sąd Okręgowy w Łodzi (Regional Court of Łódź, Poland), seeking payment in respect of subsidies intended to cover the costs incurred by that town between 2005 and 2015 for the performance of certain tasks entrusted to it in respect of government administration. In Case C-563/18, VX, WW and XV were being prosecuted before the referring court with regard to two kidnappings for financial gain perpetrated in 2002 and 2003 respectively. VX, WW and XV, who had admitted the charges against them and cooperated with the criminal authorities, applied to be granted the status of 'cooperative witnesses', which means that the referring court had consider whether to allow them an exceptional reduction in their sentences under the provisions of the Criminal Code.

Legal issue

The central legal issue in Case C-556/17 was whether under EU law a national court had the power to grant asylum directly when an administrative authority - such as the Hungarian Immigration and Asylum Office - repeatedly refused to comply with judicial rulings. Under Hungarian law at the time, courts could only annul administrative decisions but could not vary the authorities' decisions and grant international protection directly. This created a legal deadlock, as the IAO continued to reject asylum applications despite the court-ordered reconsideration and, in essence, refused to grant protection to Mr Torubarov.

Decision

In its judgment of 26 March 2020, the Court of Justice of the European Union (CJEU) ruled that the requests for preliminary rulings were inadmissible. The CJEU reaffirmed that the preliminary reference procedure did not allow delivering advisory opinions on general or hypothetical questions, but answering the questions under Article 267 TFEU was necessary for the effective resolution of a dispute. The CJEU's role in proceedings for a preliminary ruling was to help the referring court to resolve the specific dispute pending before it. As such, there had to be a connecting factor between the concrete dispute and the provisions of EU law whose interpretation was sought, by virtue of which interpretation was objectively required for the decision to be taken by the referring court. As for the case, the CJEU found that the disputes in the main proceedings were not substantively connected to EU law, in particular to the second subparagraph of Article 19(1) TEU. The CJEU found the referred questions to be of a general nature and, as such, inadmissible.

Role of the Charter in the reasoning

The Court of Justice of the European Union (CJEU) reaffirmed that under the second subparagraph of Article 19(1) TEU Member States had to provide remedies sufficient to ensure effective judicial protection for individual parties in the fields covered by EU law. Also, Article 19(1) TEU referred to the 'fields covered by Union law', irrespective of whether the Member States are implementing Union law within the meaning of Article 51(1) of the Charter of Fundamental Rights of the European Union. Finally, according to the CJEU, Article 19(1) TEU was to be applied to any national body which could rule, such as a court or tribunal, on questions concerning the application or interpretation of EU law and which therefore fell within the fields covered by that law. Thus, the Charter was a point of reference for reaffirming the wider scope of application of Article 19(1) TEU.

Impact of the decision

The judgment is important with regard to procedural implications to address rule of law issues, or more narrowly, threats to judicial independence under EU law. In the light of the reasoning of the Court of Justice of the European Union, rule of law concerns, in the abstract, may not be a subject matter of a preliminary reference procedure under Article 267 TFEU.

Implementation of the decision

No information. Concerns over the challenges to judicial independence in Poland are still unresolved.

Link

https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=CELEX:62018CA0558

Case number

C-564/19

Decision date

23.11.2021.

Deciding Body

Court of Justice of the European Union

Parties

Criminal proceedings against IS.

Facts

The case concerned a criminal procedure in Hungary against a Swedish national of Turkish origin (IS), who was accused of violating Hungarian laws related to the acquisition or transport of firearms or ammunition. The language of the procedure was Hungarian. During his first interrogation, IS, who did not speak Hungarian, was assisted by an interpreter. After the first interrogation IS fled Hungary. The referring court, a single judge at the Pesti Központi Kerületi Bíróság (Central District Court of Pest, Hungary), under Article 267 TFEU, raised concerns to Court of Justice of the European Union about the selection process and skills of the interpreter, i.e., the quality of interpretation, as Hungary lacked a system of officially certified interpreters for criminal cases. The judge, questioning whether Hungary's system for appointing interpreters met EU legal standards, referred the matter to the Court of Justice of the European Union for a preliminary ruling under Article 267 TFEU. Specifically, the judge sought clarification on the relevant Directives as to whether it was mandatory for

the Member States to create a register of properly qualified independent translators and interpreters or – failing that – ensure by some other means that it is possible to review the quality of language interpretation in judicial proceedings. Also, in case the interpretation was not of adequate quality or it was not possible to establish if the accused person had been informed of the subject matter of the charge or indictment against him or her, whether the relevant EU law had to be interpreted as the proceeding could not be continued in his or her absence. The referring judge, considering the changes in the administration of justice in Hungary, submitted questions concerning judicial independence too, including a question regarding the renumeration of judges. Upon the request of the Hungarian Prosecutor General, the Kúria (the supreme court) declared the request for a preliminary ruling unlawful as the questions were not relevant. Additionally, a disciplinary proceeding was initiated against the referring judge, which was eventually withdrawn. The referring judge complemented his/her request, asking the CJEU whether the Kúria's ruling and the initiation of the disciplinary procedure were against EU law.

Procedural history

A Hungarian court was handling a criminal case against a Swedish national of Turkish origin who needed an interpreter during his first interrogation. The referring single judge questioned the interpreter's qualifications, the quality of the interpretation and Hungary's lack of an official registry or court interpreters. The referring judge sought clarification of the relevant provision of EU law in order to determine whether the procedure was to be continued in the absence of the accused person. The referring judge also submitted questions concerning the independence of the judiciary in Hungary. Following the referral, the Hungarian Kúria (supreme court), upon the appeal of the Prosecutor General, ruled that the reference was unlawful. A disciplinary proceeding was also initiated against the referring judge. The referring judge complemented his original request to the CJEU accordingly.

Legal issue

The case raised five main legal questions. First, whether the Hungarian legal system on appointing and overseeing interpreters in criminal proceedings, lacking an independent registry, was compatible with the relevant provisions of EU law. Second, in case the language interpretation was not of adequate quality and it was not possible to establish whether the accused person had been informed of the subject matter of the charge or indictment against him or her, whether the relevant provisions of EU law had to be interpreted, as under such circumstances the criminal procedure could not be continued in the absence of the accused person. Third, whether the administration of justice in Hungary was in line with EU law requirements. Fourth,

the referring judge asked whether it was compatible with EU law if the court of last instance declared unlawful a decision by which a lower court made a request for a preliminary ruling to the CJEU, without altering the legal effects of the decision in question. Finally, the referring court sought to clarify whether EU law precluded disciplinary proceedings from being brought against a judge for having made a request for a preliminary ruling.

Decision

The Court of Justice of the European Union ruled that only it had the authority to assess the admissibility of preliminary references, and national courts could not be sanctioned for making such requests. The Kúria's (Hungarian supreme court's) declaring the request unlawful and the disciplinary proceedings against the judge were incompatible with EU law. The Court emphasised that national judges must be free to refer cases to the CJEU without fear of repercussions. On the substantive issue, the Court reaffirmed that accused persons must be informed of the charges in a language they understand and that Member States must ensure, without requiring a registry for interpreters, that interpretation is of sufficient quality. EU law precluded a person from being tried in absentia when, on account of inadequate interpretation, he or she had not been informed, in a language which he or she understood, of the accusation against him or her or where it was impossible to ascertain the quality of the interpretation provided and therefore to establish that he or she had been informed, in a language which he or she understood, of the accusation against him or her. The CJEU found the questions concerning judicial independence inadmissible as there was no connecting factor to the subject matter of the case presented.

Role of the Charter in the reasoning

The relevant provisions of EU law had to be interpreted in light of the Charter, in order to guarantee the subsequent rights in the criminal procedure. Concerning the independence of the judiciary, Article 47 of the Charter was also recalled.

Impact of the decision

In a broader context, the decision strengthened the effectiveness and the guarantees of the preliminary ruling mechanism for ensuring the uniform application of EU law. National courts must not fear repercussions for making references as they might avoid seeking the CJEU's guidance, leading to inconsistent interpretations of EU law across Member States. By prohibiting interference with the preliminary ruling process, the CJEU safeguarded the coherence and supremacy of EU law.

Implementation of the decision

As a result of the application of the conditionality regimes concerning Hungary, a key legislative amendment removed the possibility for the Kúria (supreme court) to review questions that judges would refer to the CJEU. This ensures that lower court judges can freely seek preliminary rulings without fear of disciplinary action or interference, preserving the integrity of the EU's preliminary ruling mechanism. However, the Kúria's decision is still in force.

Link

https://eur-lex.europa.eu/legal-content/hu/TXT/?uri=CELEX:62019CJ0564

Case number

C-64/16

Decision date

27.02.2018.

Deciding Body

Court of Justice of the European Union

Parties

Associação Sindical dos Juízes Portugueses v. Tribunal de Contas

Facts

The Associação Sindical dos Juízes Portugueses (ASJP), the trade union of Portuguese judges, brought an action against the Tribunal de Contas (Court of Auditors, Portugal) following the implementation of austerity measures by the Portuguese government. Under the implementing law, the salaries of a wide range of public officials - including members of the judiciary - were temporarily reduced as part of a broader fiscal consolidation effort linked to the EU's financial assistance programme for Portugal. The ASJP argued that these salary reductions, as applied to judges, violated the principle of judicial independence. The Portuguese court that submitted a request for a preliminary ruling to the Court of Justice of the European Union asked whether the second subparagraph of Article 19(1) TEU and Article 47 of the Charter were to be interpreted as meaning that the principle of judicial independence precluded general salary-reduction measures, linked to requirements to eliminate an excessive budget deficit and to an EU financial assistance programme, from being applied to the members of a Member State's judiciary.

Procedural history

The ASJP brought the case before the Supremo Tribunal Administrativo (Supreme Administrative Court of Portugal), seeking annulment of the salary reduction measures and repayment of the withheld amounts. The Portuguese court referred a question for a preliminary ruling to the Court of Justice of the European Union under Article 267 TFEU. The question was whether requirements of eliminating the excessive budget deficit and of financial assistance regulated by EU law violated the principle of judicial independence as protected under the second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union.

Legal issue

The central issue was whether reducing the renumeration of judges by way of law in order to meet requirements regulated by EU law violated the principle of judicial independence under Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights.

Decision

The Grand Chamber of the CJEU ruled on 27 February 2018 that the general salary-reduction measures applied to judges in Portugal did not violate the principle of judicial independence under EU law. First, the CJEU underlined that the material scope of the second subparagraph of Article 19(1) TEU (fields covered by EU law) was different from Article 51(1) of the Charter (implementing EU law). Second, Article 19 TEU was to be considered a concrete expression of the rule of law, enshrined in Article 2 TEU. Third, the courts of the Member States that might apply EU law had to meet the requirement of effective judicial protection. In order to do so, fourth, such courts had to be independent as confirmed by Article 47 of the Charter. Fifth, independence of the Member States' courts was also essential for judicial cooperation under Article 267 TFEU. Sixth, the CJEU emphasised that the renumeration of judges was a guarantee of judicial independence. However, the concrete measure was not to be considered one which impaired the independence of the members of the Tribunal de Contas (Court of Auditors).

Role of the Charter in the reasoning

Article 47 of the Charter was recalled in the concrete case as part of the interpretative context for understanding Article 19(1) TEU. However, considering Article 51(1) thereof, the Charter played a supportive, rather than determinative, role in the reasoning.

Impact of the decision

Although the CJEU interpreted Article 19(1) TEU as not precluding the concrete austerity measure applied to judges, its broader impact was profound. The judgment paved the way for rule of law, as enshrined in Article 2 TEU, related cases concerning national measures, especially, with regard to judicial independence.

Implementation of the decision

The Portuguese court, bound by the CJEU's interpretation, was expected to reject the ASJP's claim. However, the case's legacy lay not in its outcome for the parties, but in its doctrinal contribution to EU constitutional law: the judicial applicability of EU values.

Link

https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62016CJ0064

Case number

C-64/16

Decision date

27.02.2018.

Deciding Body

Court of Justice of the European Union

Parties

Associação Sindical dos Juízes Portugueses v. Tribunal de Contas

Facts

The Associação Sindical dos Juízes Portugueses (ASJP), the trade union of Portuguese judges, brought an action against the Tribunal de Contas (Court of Auditors, Portugal) following the implementation of austerity measures by the Portuguese government. Under the implementing law, the salaries of a wide range of public officials - including members of the judiciary - were temporarily reduced as part of a broader fiscal consolidation effort linked to the EU's financial assistance programme for Portugal. The ASJP argued that these salary reductions, as applied to judges, violated the principle of judicial independence. The Portuguese court that submitted a request for a preliminary ruling to the Court of Justice of the European Union asked whether the second subparagraph of Article 19(1) TEU and Article 47 of the Charter were to be interpreted as meaning that the principle of judicial independence precluded general

salary-reduction measures, linked to requirements to eliminate an excessive budget deficit and to an EU financial assistance programme, from being applied to the members of a Member State's judiciary.

Procedural history

The ASJP brought the case before the Supremo Tribunal Administrativo (Supreme Administrative Court of Portugal), seeking annulment of the salary reduction measures and repayment of the withheld amounts. The Portuguese court referred a question for a preliminary ruling to the Court of Justice of the European Union under Article 267 TFEU. The question was whether requirements of eliminating the excessive budget deficit and of financial assistance regulated by EU law violated the principle of judicial independence as protected under the second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union.

Legal issue

The central issue was whether reducing the renumeration of judges by way of law in order to meet requirements regulated by EU law violated the principle of judicial independence under Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights.

Decision

The Grand Chamber of the CJEU ruled on 27 February 2018 that the general salary-reduction measures applied to judges in Portugal did not violate the principle of judicial independence under EU law. First, the CJEU underlined that the material scope of the second subparagraph of Article 19(1) TEU (fields covered by EU law) was different from Article 51(1) of the Charter (implementing EU law). Second, Article 19 TEU was to be considered a concrete expression of the rule of law, enshrined in Article 2 TEU. Third, the courts of the Member States that might apply EU law had to meet the requirement of effective judicial protection. In order to do so, fourth, such courts had to be independent as confirmed by Article 47 of the Charter. Fifth, independence of the Member States' courts was also essential for judicial cooperation under Article 267 TFEU. Sixth, the CJEU emphasised that the renumeration of judges was a guarantee of judicial independence. However, the concrete measure was not to be considered one which impaired the independence of the members of the Tribunal de Contas (Court of Auditors).

Role of the Charter in the reasoning

Article 47 of the Charter was recalled in the concrete case as part of the interpretative context for understanding Article 19(1) TEU. However, considering Article 51(1) thereof, the Charter played a supportive, rather than determinative, role in the reasoning.

Impact of the decision

Although the CJEU interpreted Article 19(1) TEU as not precluding the concrete austerity measure applied to judges, its broader impact was profound. The judgment paved the way for rule of law, as enshrined in Article 2 TEU, related cases concerning national measures, especially, with regard to judicial independence.

Implementation of the decision

The Portuguese court, bound by the CJEU's interpretation, was expected to reject the ASJP's claim. However, the case's legacy lay not in its outcome for the parties, but in its doctrinal contribution to EU constitutional law: the judicial applicability of EU values.

Link

https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62016CJ0064

National Courts

Case number

Knk.IV.40.648/2021/23.

Decision date

15.11.2021.

Deciding Body

Kúria (Supreme Court, Hungary)

Parties

Six petitioners (five private persons and a political party) v. National Election Commission

Facts

On 21 July 2021, the Hungarian Government initiated a national referendum on five specific questions, under Article 8(1) of the Fundamental Law. One of these questions was:""Do you support showing media content about gender reassignment to minors?"" The National Election Commission, by its Decision no. 18/2021, approved the question. Five individuals and one political party separately challenged the NEC's decision before the Kúria (supreme court, Hungary). The petitioners argued that the question did not meet the criteria of clarity. Second, depending on the answer to the question, the amendment of the Fundamental Law would be necessary, taking into consideration certain fundamental rights. Third, the petitioners claimed that the question contradicted EU law, including the Charter, and international treaties. The petitioners requested the Kúria annul the NEC's decision and reject the proposed referendum question."

Procedural history

On 21 July 2021, the Minister of Justice (Hungary) submitted the question for referendum to the National Election Commission (NEC). The NEC reviewed the submission and, by Decision No. 18/2021, approved the question for a referendum. The NEC argued that it met the constitutional and legal requirements. Following the NEC's approval, one political party and five individuals challenged the NEC's decision at the Kúria (supreme court, Hungary), requesting the annulment of the NEC's decision and the rejection of the proposed question for referendum.

Legal issue

The primary legal issues revolved around constitutionality and legality of the question for referendum. As for the criteria of clarity, the issue was whether voters could

make an informed decision based on the proposed question without confusion or misinterpretation. Second, in the view of the petitioners, depending on the answer to the question of the referendum, the amendment of the Fundamental Law would be necessary. Under Hungarian law, it was prohibited to initiate a referendum on such a question. Related to this, the question concerned certain fundamental right such as the right to human dignity and children's rights. In connection to EU law, the petitioners recalled certain provisions of the Charter too.

Decision

The Kúria upheld the NEC's decision. The ruling included the following key points. The referendum question complied with constitutional and legal requirements. First, the Kúria argued that the question met the criteria of quality as it was obvious what "showing" meant and what would be required from the National Assembly. The Kúria underlined that the right of children to the free development of their personality did not include the right to have access to information on gender reassignment before they reach the age of majority. The State did not have an obligation to inform children about gender reassignment. The Kúria has held that the prohibition on the broadcasting of media content depicting gender reassignment to minors by means of linear media services did not affect the free development of personality in a manner contrary to the Fundamental Law. As for the "yes" answer, the Kúria noted that the fact that such a programme was not to be classified as not recommended for minors under the age of eighteen did not mean that the State would not be able to meet its institutional duties under Article XVI of the Fundamental Law to protect minors and, as such, amendment of the Fundamental Law was not required.

Role of the Charter in the reasoning

The petitioners argued that the question for a referendum would be incompatible with fundamental rights enshrined in the EU Charter of Fundamental Rights, namely the right to human dignity, freedom of expression and non-discrimination. The Kúria, despite the claim of the petitioners who also referred to the Treaty on the Functioning of the European Union and Directive 2010/13/EU, did not apply the Charter. Instead, it assessed the question for a referendum primarily within Hungary's constitutional and legal framework. The Kúria acknowledged that the fundamental rights principles raised by the petitioners were present in Hungary's Fundamental Law but did not rule on whether the referendum question was in direct conflict with EU law or international human rights law.

Impact of the decision

The Kúria's ruling, which upheld the NEC's approval of the government's question for the referendum, had significant political and societal consequences. The decision allowed the Hungarian government to move forward with the national referendum which was finally held on 3 April 2022, alongside other related questions concerning LGBTQ+ topics.

Implementation of the decision

Despite the Kúria's ruling allowing the referendum to proceed, the number of votes cast did not reach the validity threshold. According to Hungarian electoral rules, a referendum is only valid if more than 50% of eligible voters cast a valid vote. In this case, a significant number of voters intentionally cast invalid ballots as part of a coordinated protest campaign led by civil society organisations and opposition groups. As a result, the National Election Commission (NEC) officially declared the referendum invalid, meaning that no binding legislative consequences followed.

Link

https://fra.europa.eu/en/caselaw-reference/hungary-curia-knkiv40648202123#deeplink2 https://kuria-birosag.hu/hu/nepszavugy knkiv40648202123-szamu-hatarozat

Case number

105.K.702.760/2022/28

Decision date

04.04.2023.

Deciding Body

Budapest-Capital Regional Court

Parties

Plaintiff v. Országos Idegenrendészeti Főigazgatóság - Közép-Dunántúli Regionális Igazgatóság (Regional Directorate of Central Transdanubia of the National Directorate-General for Aliens Policing)

Facts

The plaintiff, a third-country national who had been living in Hungary with subsidiary protection status since 2015, had his status revoked in 2020. In 2021 the plaintiff applied for recognition as stateless, but the application was rejected because the national security authority considered his presence in Hungary a threat to national security. Under Hungarian law, identifying such a threat requires a formal rejection, without substantive examination of the application for the recognition of statelessness status.

Procedural history

The plaintiff challenged the rejection, arguing that the decision lacked reasoning and infringed his fundamental procedural rights. The Hungarian court had to examine whether the plaintiff's right to defence and effective remedy had been violated, since the rejecting authority did not provide reasons for why the plaintiff was considered a threat to national security and did not grant access to the underlying classified information.

Legal issue

The main question was whether the formal refusal without providing reasons and not granting access to classified evidence in national security-based decisions violated the plaintiff's right to defence and right to an effective remedy, protected by the Fundamental Law of Hungary and the Charter of Fundamental Rights of the EU.

Decision

The Court held that it was incumbent on the defendant authority to state the reasons for its decision, in which it could not rely on the mere fact that it was bound by another authority's expert opinion under national law, and that the plaintiff could request access to the classified information upon which the expert opinion was based in a separate procedure.

Role of the Charter in the reasoning

Although the plaintiff's case did not fall directly under relevant EU asylum directives, the Charter was cited as a point of reference. The court took into account Articles 41 and 47 of the Charter by analogy, aligning with CJEU case law (C-300/11 and C-159/21), and emphasised the need to balance national security concerns with ensuring a fair procedure and access to justice.

Impact of the decision

The decision strengthened the procedural safeguards in statelessness determination procedures in Hungary, clarifying that national security-based rejections must still respect fundamental rights. Authorities cannot issue blanket or unreasoned refusals based solely on expert opinions.

Implementation of the decision

The ruling requires administrative authorities to better justify their decisions in cases that involve national security concerns and to allow applicants to seek access to classified information through separate legal channels. It also advocates for the application of Charter rights in national administrative procedures, especially in sensitive areas such as migration and statelessness.

Link

https://fra.europa.eu/en/caselaw-reference/hungary-budapest-capital-regional-court-105k702760202228#deeplink1

Case number

IV/02551/2024

Decision date

15.11.2024.

Deciding Body

Consitutional Court of Hungary

Parties

Transparency International Hungary (petitioner)

Facts

In December 2023, the Hungarian National Assembly adopted Act LXXXVIII of 2023 on the protection of national sovereignty. The Act established he Sovereignty Protection Office, which, in the interest of protecting constitutional identity, would carry out analytical, assessment, proposal-making and investigative activities. In 2024 the Office initiated a comprehensive investigation concerning Transparency International Hungary (TI). The investigation alleged that TI Hungary, through foreign funding, was influencing Hungarian voters. TI Hungary filed a constitutional complaint challenging several provisions of the Act. The challenged provisions of the Act defined the Office's powers so broadly that it could initiate proceedings against any entity that participated in democratic discourse, for basically any reason. TI claimed that the challenged provisions violated the right to freedom of expression, restricting the applicant's right to express its views on any social or political matter. TI Hungary also claimed that the rules governing the Office's procedure infringed the right to a fair administrative procedure as they did not guarantee meaningful procedural rights for the clients. Lastly, as there was no legal remedy granted against the Office's investigative procedure and no administrative lawsuit could be initiated, the Act violated the right to legal remedy and the right to a fair trial.

Procedural history

The Office initiated its procedure against Transparency International Hungary on 18 June 2024. TI Hungary filed a constitutional complaint against several provisions of the Act on the protection of national sovereignty on 19 June 2024. The Constitutional Court delivered its Decision 20/2024. (XI. 28.) AB on 15 November 15 2024. The challenged provisions of the Act allowed the Office to explore and investigate interest representation activities, not including the activities of diplomatic or foreign missions and professional interest representation organisations, information manipulation and disinformation activities, activities aimed at influencing democratic discourse and state and social decision-making processes, including activities influencing decision making by individuals who exercise public authority responsibilities of the

state, As for the procedural provisions, for example, the Act authorised the Office to request the investigated organisation provide information and data. Importantly, the Act effectively ruled out the possibility of the judicial remedy against the findings and reports of the Sovereignty Protection Office.

Legal issue

The petitioner claimed that the challenged provisions of the Sovereignty Protection Act, concerning its investigative competences, being broad and general, violated several fundamental rights enshrined in the Fundamental Law of Hungary, including the right to the freedom of expression, the right to a fair trial and the right to an effective remedy.

Decision

The Constitutional Court dismissed the complaint. First, it underlined that the Office safeguarded constitutional identity through the protection of national sovereignty. Second it ruled that challenged provisions of the Sovereignty Protection Act did not violate the Fundamental Law of Hungary. The Constitutional Court held that the Office was not authorised to apply any legal consequence and as such, the challenged provisions did not violate the petitioner's right to freedom of expression. Under the Act, the Office did not have any sanctioning power in connection with its investigation procedure. The Office's procedures were not to be considered administrative. Its reports did not constitute sanctions and did not have direct legal force. The Office was not directly entitled to impose legal sanctions, and as such, the Constitutional Court held that its proceedings were not covered by the protection of the right to a fair procedure. Finally, as the Office's reports did not constitute an official or any other administrative decision, not providing a remedy against them was not contrary to the Fundamental Law.

Role of the Charter in the reasoning

The Charter did not have a role in the constitutional complaint procedure. However, the European Commission on 4 December 2024 brought an infringement procedure against Hungary to the Court of Justice of the European Union (C-829/24). The Commission claimed that by adopting the Act on the protection of national sovereignty Hungary violated, among others, Articles 7, 8, 11, 12, 47 and 48 of the Charter of Fundamental Rights of the European Union.

Impact of the decision

The Decision of the Constitutional Court allows the Sovereignty Protection Office to continue its operations, raising concerns among civil society organizations about potential chilling effects on their free expression and civic engagement.

Implemnetation of the decision

Following the exhaustion of domestic legal remedies, in March 2025, Transparency International Hungary filed a complaint with the European Court of Human Rights, claiming that the Report of the Office and the Act infringed its rights ensrhined in the European Convention on Human Rights. Also, as has been stated, on 4 December 2024 the European Commission brought an infringement procedure against Hungary to the Court of Justice of the European Union (C-829/24). The Commission claimed that by adopting the Act on the protection of national sovereignty Hungary infringed several provisions of EU law.

Link

https://alkotmanybirosag.hu/ugyadatlap/?id=57838AD2B57B9BF-0C1258B5500449DB1

Case number

Mfv.X.10.049/2021/16

Decision date

02.06.2021.

Deciding Body

Curia

Parties

Plaintiff (judge) v. Budapest Court of Appeal, President of the National Office for the Judiciary

Facts

Hungary's 2011 constitutional and judicial reforms established the President of the National Office for the Judiciary (NOJ), responsible for the administration of the judiciary. The President's powers included the possibility to declare a judicial appointment procedure unsuccessful without the requirement to provide detailed justification. The plaintiff, a judge, applied for a position and later for another at the Budapest Court of Appeal, receiving the highest scores in the selection process in both cases. Despite these scores, the NOJ President declared both selection procedures unsuccessful. The plaintiff challenged these decisions, arguing that they lacked justification. A first-instance court ruled in favour of the plaintiff, annulling the NOJ President's decisions. The second-instance court dismissed the case, finding the plaintiff did not have standing under Hungarian law. The plaintiff appealed to the Kúria (supreme court, Hungary), which overturned the appellate ruling in 2019 and referred

the case back to the second instance court to decide the plaintiff's appeal on the merits. In the repeated procedure, the second instance court concluded that, based on the rule of law principle and the right to an effective remedy, the plaintiff had the right to initiate a procedure against the President of the NOJ, even though this right had no explicit legal basis in Hungarian legislation. The second instance court also determined the legal consequences of its decision and ordered the President of the NOJ (alternatively): (i) to transfer the plaintiff to the Budapest Court of Appeal, or (ii) to ask for permission from the National Judicial Council to fill the vacant position with another candidate, or (iii) to declare the application procedure unsuccessful in a duly reasoned decision. However, the Kúria, in the presented case, quashed the decision of the second instance court as, in light of the wording of the Hungarian law, the judge lacked the standing to challenge the decision of the NOJ. The plaintiff challenged the Kúria's judgment at the Constitutional Court of Hungary, which is still pending (IV/03595/2021).

Procedural history

The case moved through multiple stages, beginning with a favourable first-instance ruling for the plaintiff, followed by the appellate court's dismissal of his claim. The Kúria's 2019 decision - also referring to EU law, including Article 19(1) TEU and Article 47 of the Charter - reinstated his right to an effective remedy, leading to a second appellate ruling that imposed legal obligations on the NOJ President. The NOJ President and the employer then appealed, and the Kúria, for the second time, ultimately overturned this second ruling, dismissing the plaintiff's case.

Legal issue

The case examined whether the plaintiff had the right - standing - to challenge the NOJ President's decisions and whether the appellate court had lawfully determined legal consequences in this regard. Second, it concerned whether the appellate court exceeded its authority by imposing specific legal consequences on the NOJ President, a matter unrelated to EU law.

Decision

The Kúria (supreme court, Hungary) quashed the appellate ruling and dismissed the plaintiff's petition. It held that the plaintiff could not bring proceedings directly against the NJO President's decisions when declaring the appointment procedure unsuccessful as Hungarian law did not provide him with standing in this regard. The Kúria also found that the appellate court had acted unlawfully by ordering the NJO President to take specific actions, as these remedies had no basis in Hungarian law and exceeded the court's authority.

Role of the Charter in the reasoning

The Charter played a role in the earlier stages of the procedure as the Kúria, in its first ruling, argued that - in light of Article 47 of the Charter of Fundamental Rights of the European Union, Articles 2 and 19 of the Treaty on the European Union, the principles of rule of law and effective remedy and the relevant case-law of the Court of Justice - the plaintiff had the right to challenge the resolutions declaring the application procedures unsuccessful. However, the Kúria, in the present judgment, came to the conclusion that the standing of the plaintiff did not raise any question of the implementation of EU law. The right of standing is a narrower concept than the right to an effective remedy. The earlier judgment of the Kúria applied EU law to conclude that the plaintiff could pursue his claim before a court in an employment dispute. However, this time, the Kúria argued that the question of against whom the claimant can assert his claim was to be judged according to the domestic (national) law.

Impact of the decision

The judgment upheld national procedural limits by restricting how the NOJ President's decisions could be challenged. The judgment preserved the NOJ President's discretionary authority in judicial appointments.

Implementation of the decision

Following the Kúria's ruling in case no. Mfv.X.10.049/2021/16, there have been ongoing concerns regarding the transparency and fairness of judicial appointments in Hungary. Reports indicate that irregularities persisted in the appointment processes, potentially undermining judicial independence. Notably, the National Judicial Council (NJC) identified instances where the Kúria (supreme court, Hungary) President appointed judges without adhering to standard procedures.

Link

https://fra.europa.eu/en/caselaw-reference/hungary-curia-mfvx10049202116#deep-link2

Case number

IV/02096/2012

Decision date

16.07.2012.

Deciding Body

Consitutional Court of Hungary

Parties

Judges (petitioners)

Facts

In 2011, the Hungarian National Assembly enacted an Act that lowered the mandatory retirement age for judges from 70 to 62, 63, 64 and 65 years, depending on their year of birth. This change led to the early retirement of numerous judges, including those in senior positions. The affected judges argued that the challenged provision violated their various constitutional rights, judicial independence and the irremovability of judges.

Procedural history

Following the enactment of the new retirement age, over a hundred judges submitted constitutional complaints to Constitutional Court, challenging the constitutionality of the legislation. The Constitutional Court joined these constitutional complaints and delivered its decision on 16 July 2012.

Legal issue

The primary legal question was whether the sudden reduction of the retirement age for judges infringed upon constitutional principles, notably judicial independence and the irremovability of judges.

Decision

The Constitutional Court held that the legislation was unconstitutional. It argued that the abrupt change violated the principle of judicial independence and the irremovabilty of judges.

Role of the Charter in the reasoning

The Charter did not have a role in the constitutional complaint procedure.

Impact of the decision

The Constitutional Court's ruling was a significant affirmation of judicial independence in Hungary. However, its practical impact was limited. Despite the annulment of the legislation, many judges had already been dismissed, and the decision did not mandate their reinstatement.

Implementation of the decision

Following the decision, affected judges had to pursue individual legal actions to seek reinstatement or compensation. The lack of automatic remedies highlighted challenges in the enforcement of Constitutional Court decisions and underscored the need for mechanisms to ensure effective compliance.

Link

https://alkotmanybirosag.hu/ugyadatlap/?id=0D0C4A0C9BF49C-C4C1257ADA00524F96&utm_source=chatgpt.com

Annex. 2. Climate related case law database

CJEU

Case number

T-330/18

Decision date

08.05.2019.

Deciding Body

General Court

Parties

Armando Carvalho and Others v. European Parliament and Council of the European Union

Facts

In this case, ten families from across the European Union (EU), Kenya and Fiji, operating in the tourism and agriculture sector, and the Swedish Sami Youth Association Sáminuorra, challenged the EU's climate law based on incompatibility with fundamental rights and international law. Thus, the applicants sought annulment of the relevant provisions in the Emission Trading System Directive (ETS), Effort Sharing Regulation (ESR) and Land Use Land Use Change and Forestry Regulation (LULUCF). In this regard, the applicants sought to compel the EU to adopt more stringent greenhouse gas emissions, specifically requiring at least 50-60% reduction by 2030 compared to 1990 levels.

Procedural history

The Peoples' Climate Case was brought as a first instance direct action for annulment before the General Court of the CJEU.

Legal issue

In this action under Article 263 TFEU, the applicants sought an injunction requiring the European Union to strengthen its existing climate law — specifically the ETS, ESR and LULUCF — arguing that current emissions targets violate higher-ranking legal obligations to protect fundamental rights and the environment. These claims are based on the EU Charter of Fundamental Rights, the TFEU, the UNFCCC and the Paris Agreement, requesting that existing legislation remain in force until more ambitious measures are adopted in accordance with EU obligations.

Decision

The General Court did not rule on the merits. Instead, the Court dismissed the case on procedural grounds, in the absence of individual concern.

Role of the Charter in the reasoning

The applicants argued that the EU's inadequate climate action violated multiple rights under the Charter of Fundamental Rights of the European Union, including the rights to life, physical integrity, property, work and equal treatment. However, the case was dismissed on procedural grounds, and the Charter was only indirectly relevant—specifically, Article 47 was invoked by the Court to assert that the right to effective judicial protection does not grant an unconditional right to access the Court, as doing so would exceed its jurisdiction.

Impact of the decision

This decision significantly narrows the pathway for strategic climate litigation in the EU by upholding strict standing requirements, effectively excluding individuals from directly challenging broad legislative acts. By ruling that Article 47 does not guarantee unconditional access to the Court, it reinforces procedural barriers that limit judicial review of the EU's climate policies.

Implementation of the decision

N/A

Link

https://curia.europa.eu/juris/document/document.jsf?text=&docid=214164&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2887610

Case number

C-565/19 P

Decision date

25.03.2021.

Deciding Body

Court of Justice of the European Union

Parties

Armando Carvalho and Others v. European Parliament and Council of the European Union (Appeal)

Facts

By their appeal, Mr. Armando Carvalho and 36 other appellants sought to set aside the order of the General Court, in which the case was dismissed as inadmissible.

Procedural history

This is an appeal to the General Court's decision, which declared the action inadmissible because the claimants had no standing to challenge the EU's climate law.

Legal issue

The legal issue in the appeal case was whether the applicants had standing to challenge the EU's climate legislation (EU ETS, ESR, LULUCF) by demonstrating individual concern under Article 263(4) TFEU.

Decision

The Court of Justice dismissed the appeal, ruling that the alleged infringement of fundamental rights is not sufficient to establish admissibility of an action for annulment brought by an individual.

Role of the Charter in the reasoning

The Charter, specifically Article 47, was invoked by the appellants to argue for broader access to judicial review; however, the Court upheld the General Court's position, claiming Article 47 does not guarantee an unconditional right to directly challenge EU legislative acts. Instead, effective judicial protection can be ensured through alternative routes like Article 267 TFEU (preliminary rulings) or Article 277 TFEU (plea of illegality).

Impact of the decision

This decision significantly impacts EU jurisprudence by reinforcing strict standing rules, thereby limiting the ability of individuals to bring direct climate-related challenges. This threshold effectively bars the future landscape of strategic litigation.

Implementation of the decision

N/A

Link

https://curia.europa.eu/juris/document/document.jsf?text=&docid=239294&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2914795

Case number

T-141/19

Decision date

06.05.2020.

Deciding Body

General Court

Parties

Peter Sabo and Others v. European Parliament and Council of the European Union

Facts

In Sabo, a group of individuals and environmental organisations challenged the Recast Renewable Energy Directive for including forest biomass, arguing that emissions from carbon forest biomass violated Article 191 TFEU and fundamental rights under the EU Charter.

Procedural history

The General Court ruled inadmissibility under the criteria for individual concern pursuant the strict test of Article 263(4) TFEU.

Legal issue

Individuals and organizations from both EU and non-EU countries argued the Renewable Energy Directive 2018/2001 must be annulled due to (1) its support for wood-based biomass fuels which lead to widespread deforestation and (2) the EU's inadequate accounts for GHG emissions stemming from wood-fuel production and burning, which contradict the objective of global warming mitigation.

Decision

The General Court dismissed the case as manifestly unfounded, emphasising that alleging an infringement of fundamental rights alone does not suffice to meet the admissibility criteria for individual actions under the strict test of Article 263(4) TFEU.

Role of the Charter in the reasoning

Rights enshrined in the Charter, specifically, respect for private and family life (Article 7), the right to property (Article 17), a high level of human health protection (Article 35), a high level of environmental protection (Article 37) and the freedom to manifest religion (Article 10), were invoked by the appellants to argue for broader access to judicial review. These rights were claimed to be infringed upon by the destruction of cultural and religious heritage sites in Estonia, Romania and Slovakia, such as

forest groves, noise and air pollution resulting from the operation of wood-fueled power plants and production of wood pellets. Furthermore, the clearing of trees in personal surroundings for wood pellet production led to damage of property, loss of traditional hunting values and inadequate flood protection. Despite these claims, the General Court dismissed the case as manifestly unfounded, emphasising that mere infringements of fundamental rights alone do not satisfy the admissibility criteria for individual actions under the strict test of Article 263(4) TFEU.

Impact of the decision

This decision significantly impacts EU jurisprudence by reinforcing strict standing rules, thereby limiting the ability of individuals to bring direct climate-related challenges. This threshold effectively bars the future landscape of strategic litigation.

Implementation of the decision

On 14 January 2021 the Court of Justice upheld the General Court's decision to dismiss the Sabo appeal on the grounds of standing. The Court confirmed there was no legal error in determining that the plaintiffs failed to show the directive affected them individually. This ruling reinforced the strict criteria required to establish individual concern in EU law.

Link

https://curia.europa.eu/juris/document/document.jsf?text=&docid=226323&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1450609

Case number

T-579/22

Decision date

Pending

Deciding Body

General Court

Parties

ClientEarth v. Commission

Facts

The European Commission adopted Delegated Regulation 2021/2139 under the EU Taxonomy Regulation, designating certain activities—such as the combustion of forest biomass for energy and the manufacture of bio-based plastics—as environmentally sustainable. Thus, ClientEarth, an environmental NGO, challenged

this regulation, arguing that the Commission's classification ignored scientific evidence and violated the criteria laid down in the Taxonomy Regulation, pursuant to the internal review mechanism of the Aarus Convention. As ClientEarth was unsatisfied with the Commission's review of the alleged violation, ClientEarth has now challenged the Commission before the General Court.

Procedural history

ClientEarth initially submitted a request for internal review under the Aarhus Regulation to the European Commission. Unsatisfied with the Commission's response, ClientEarth brought an action before the General Court of the EU in 2022, challenging the legality of Delegated Regulation 2021/2139. The case is currently pending.

Legal issue

The core legal issue is whether the European Commission acted unlawfully by labelling forest biomass and certain bio-based plastics as green investments, in alleged contradiction with the scientific criteria and legal thresholds set by the Taxonomy Regulation.

Decision

Pending.

Role of the Charter in the reasoning

Pending.

Impact of the decision

If successful, the case will have an immediate effect on the labelling of bioenergy, bio-based plastics and chemicals as sustainable.

Implementation of the decision

N/A

Link

Application: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62022TN0579:EN:HTML

Case number

C-212/21 P

Decision date

06.07.2023.

Deciding Body

Court of Justice of the European Union

Parties

ClientEarth v. European Investment Bank

Facts

In 2018 the European Investment Bank approved a €60 million loan to fund a biomass power plant in Spain. ClientEarth challenged this decision, arguing that the environmental benefits were overstated and risks such as deforestation and emissions were underestimated. The EIB rejected ClientEarth's internal review request, claiming its financing decision was not subject to review under the Aarhus Convention

Procedural history

ClientEarth brought the case before the EU General Court, which ruled in 2021 that the EIB must accept the internal review request, holding that the financing decision was an "administrative act" under "environmental law". The EIB and European Commission appealed to the Court of Justice of the EU, which confirmed the General Court's interpretation and upheld ClientEarth's right to seek review.

Legal issue

The legal issue concerned whether financing decisions by the EIB that may impact environmental law fall under the scope of the Aarhus Convention and can be challenged via internal review as administrative acts.

Decision

The Court upheld the General Court's decision, finding that the EIB's financing decision was taken under environmental law and, thus, was subject to internal review. Furthermore, the Court found the EIB's decision was an administrative act as it would ultimately produce legally binding effects on third parties. Thus, the ECJ issued an order for the EIB to accept ClientEarth's petition for internal review.

Role of the Charter in the reasoning

This case concerned the notion of administrative acts under the Aarhus Convention. The Charter was not invoked in the legal reasoning of the Court.

Impact of the decision

This judgment strengthened accountability for EU financial institutions by clarifying that decisions with environmental implications are subject to legal scrutiny under the Aarhus Convention, reinforcing access to justice for NGOs.

Implementation of the decision

N/A

Link

https://curia.europa.eu/juris/document/document.jsf?text=&docid=275241&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3130354

National Courts

Case number

ECLI:NL:PHR:2019:1026

Decision date

13.09.2019.

Deciding Body

Supreme Court of the Netherlands

Parties

Urgenda v. the State of the Netherlands

Facts

The Urgenda Foundation sued the Dutch government to compel stronger action on climate change, arguing the state's reduction targets were insufficient. The Hague District Court agreed in 2015, ordering the government to reduce greenhouse gas emissions by at least 25% from 1990 levels by 2020, based on international climate obligations and the precautionary and "no harm" principles.

Procedural history

The Dutch government appealed, but the Hague Court of Appeal in 2018 upheld the lower court's decision, grounding the ruling in Articles 2 and 8 of the European Convention on Human Rights (ECHR), which protect the right to life and private life. The Supreme Court of the Netherlands upheld the judgment on 20 December 2019, affirming the government's legal duty to mitigate climate change under human rights law.

Legal issue

The legal issue concerned the Dutch government's legal duty under national and international law, particularly Articles 2 and 8 ECHR, to reduce greenhouse gas emissions more ambitiously to protect human rights from climate change.

Decision

In a landmark decision on 20 December 2019 the Dutch Supreme Court upheld lower court rulings requiring the government to reduce greenhouse gas emissions by at least 25% by the end of 2020, grounding the obligation in the state's duties under the European Convention on Human Rights. This was the first time a highest court affirmed that governments have binding legal duties to prevent dangerous climate change based on human rights law.

Role of the Charter in the reasoning

The Court referred to the European Convention on Human Rights, not the Charter, to ground the Dutch state's legal duty to protect its citizens from the real and foreseeable risks of climate change. The ECHR was found applicable, and it had a significant impact on the decision because Articles 2 and 8 imposed a positive obligation on the State to take suitable, effective climate measures to protect life and private life.

Impact of the decision

This was the first decision, wherein a Supreme Court compelled the government to meet substantive emission reduction targets based on human rights obligations, setting a powerful precedent for climate litigation worldwide.

Implementation of the decision

Following the 2019 Supreme Court ruling, the Dutch government implemented significant climate policies, including coal plant closures and major funding commitments, though it narrowly met the 2020 target largely due to the COVID-19 slowdown. Internationally, Urgenda inspired a surge of rights-based climate lawsuits, influencing legal strategies and court decisions in multiple countries.

Link

https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf

Case number

ECLI:NL:RBDHA:2021:5339

Decision date

26.05.2021.

Deciding Body

The Hague District Court

Parties

Milieudefensie v. Shell

Facts

As Shell is a major global emitter of greenhouse gases, the NGO Milieudefensie argued that Shell's emissions and contribution to climate change endanger human rights and public safety. As such, the NGO sought a court order requiring Shell to reduce emissions in line with the Paris Agreement targets.

Procedural history

The case was filed in 2019 by Milieudefensie and co-plaintiffs against Shell in the Hague District Court, which ruled in 2021 that Shell must cut emissions by 45% by 2030. Shell appealed, and in 2024 the Court of Appeal upheld the duty of care but removed the specific emissions target; Milieudefensie has since appealed to the Dutch Supreme Court.

Legal issue

The legal issue concerned whether Shell, a private company, has a legal duty of care under Dutch tort law and human rights obligations to reduce its greenhouse gas emissions to prevent dangerous climate change.

Decision

In May 2021 the Hague District Court ordered Shell to reduce its global CO2 emissions by 45% by 2030, based on Dutch tort law and human rights obligations. The ruling applied to Scope 1, 2 and 3 emissions and was provisionally enforceable.

Role of the Charter in the reasoning

As in Urgenda, the Court found Articles 2 and 8 of the ECHR relevant, reinforcing Shell's duty of care to prevent foreseeable harm from climate change. Thus, the ECHR (rather than the Charter) supported the legal reasoning behind the company's human rights obligations.

Impact of the decision

The decision set legal precedent by interpreting corporate duty of care in the context of climate change and human rights, with the Court holding a private multinational corporation legally accountable for aligning its emissions reductions with the goals of the Paris Agreement.

Implementation of the decision

Shell appealed, and in 2024 the Court of Appeal upheld the existence of a duty of care, but refused to impose a specific emissions reduction target. Milieudefensie is now appealing this outcome to the Dutch Supreme Court, seeking reinstatement of the 45% target.

Link

https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/

Case number

Pending

Decision date

Pending

Deciding Body

District Court North-Holland

Parties

Greenpeace Netherlands and 8 citizens of Bonaire v. The Netherlands

Facts

Greenpeace Netherlands and eight citizens of Bonaire filed a lawsuit against the Dutch State in January 2024, arguing that insufficient climate adaptation and mitigation measures threaten the human rights of Bonaire's inhabitants. The plaintiffs contend that the Dutch government has failed to protect the island's population—who face disproportionate climate risks and structural inequalities—contrary to the Paris Agreement, human rights treaties and Dutch law.

Procedural history

In September 2024, the District Court of The Hague ruled Greenpeace admissible to represent Bonaire's interests under Dutch civil law, while rejecting the individual claims of the eight citizens for lack of direct personal impact and overlapping representation. The case is ongoing, with the first substantive hearing expected in 2025.

Legal issue

The case raises whether the Netherlands has a legal obligation under domestic and international law to implement stronger climate mitigation and adaptation policies to safeguard the rights to life, private and family life, culture and non-discrimination of Bonaire's inhabitants, taking into account their unique vulnerability and historical context.

Decision

Pending.

Role of the Charter in the reasoning

Pending.

Impact of the decision

If successful, the decision is likely to significantly impact jurisprudence by reinforcing states' obligations to address climate change holistically—including adaptation and mitigation—while recognizing the rights of vulnerable and marginalized communities within their jurisdictions.

Implementation of the decision

N/A

Link

Pre-Litigation Letter https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2023/20230519_67807_complaint.pdf

Case number

ECLI:NL:RBAMS:2024:1512

Decision date

20.03.2024.

Deciding Body

Amsterdam District Court

Parties

Fossielvrij v. KLM

Facts

Fossielvrij alleged that KLM's promotional campaign exaggerated the environmental benefits of its measures, such as sustainable fuels and offsetting, thereby misleading consumers about the sustainability of flying.

Procedural history

The case began as a class action initiated by Fossielvrij against KLM, supported by a prior ruling from the Dutch Advertising Code Committee deeming KLM's "Fly Responsibly" campaign misleading, and was decided by the Amsterdam District Court in 2024.

Legal issue

The legal issue was whether KLM's environmental marketing claims, including terms like "Co2 neutral", constituted misleading and unlawful commercial practices under Dutch consumer law.

Decision

The Amsterdam District Court ruled KLM's marketing claims were misleading as generalised and vague statements misrepresented environmental benefits. Although KLM retained the right to continue to promote flying without obligations to warn of its unsustainable nature, if KLM chooses to communicate its climate impact, claims must be truthful and accurate.

Role of the Charter in the reasoning

The Court relied on fundamental rights, not explicitly mentioning the Charter, in the context of unfair commercial practices and consumer protection

Impact of the decision

The Fossielvrij v. KLM case is likely to influence jurisprudence significantly as it underscores that companies can be held legally accountable for greenwashing under consumer protection laws.

Implementation of the decision

N/A

Link

https://www.clientearth.org/media/cx4po41h/klm-judgment-20-march-2024.pdf

Case number

N/A

Decision date

Summons: 19.01.2024.

Deciding Body

District Court

Parties

Milieudefensie v. ING

Facts

On 28 March 2025 Milieudefensie filed a civil lawsuit against ING Bank in Amsterdam, alleging that ING's continued financing of high-emission industries contributes significantly to dangerous climate change. The claim, supported by over 30,000 co-claimants, argues that ING's failure to implement adequate emissions reduction policies violates its societal duty of care under Dutch law and infringes on human rights related to life, health and a sustainable environment.

Procedural history

Following a notice of liability in January 2024 and a final demand letter in January 2025, which ING responded to but did not satisfy, Milieudefensie formally initiated the lawsuit. The case builds on legal precedents such as Urgenda v. Netherlands and Milieudefensie v. Shell, drawing on climate science and international standards.

Legal issue

The key legal issue is whether ING Bank breached its duty of care by failing to adopt effective climate policies and reduce its scope 1, 2 and 3 emissions, thereby causing foreseeable harm through financing fossil fuel expansion and high-emission sectors, in violation of Dutch tort law and international human rights obligations.

Decision

Pending.

Role of the Charter in the reasoning

Pending.

Impact of the decision

If successful, the decision is likely to have a significant impact on Dutch jurisprudence by establishing clear obligations for financial institutions, which play a pivotal role in the global economy, to align their actives with climate goals. This has the potential to set an important precedent in terms of systemic change in accountability for financing institutions.

Implementation of the decision

N/A

Link

https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2025/20250328_67808_summons.pdf

Annex 3. Media Freedom case law database

CJEU

Case number

C-633/22

Decision date

04.10.2024.

Deciding Body

Court of Justice of the European Union

Parties

Real Madrid Club de Fútbol, AE v. Société Éditrice du Monde SA

Facts

Real Madrid sought enforcement in France of a Spanish judgment awarding damages for defamation against the French newspaper Le Monde. French courts refused enforcement, citing potential violation of freedom of expression under Article 11 of the Charter.

Procedural history

The French Court of Cassation referred questions to the CJEU regarding the application of the public policy exception under the Brussels I Regulation in light of the Charter.

Legal issue

Whether the enforcement of a foreign judgment awarding damages for defamation can be refused on the grounds that it would contravene the fundamental right to freedom of expression under Article 11 of the Charter.

Decision

The CJEU held that enforcement can be refused if it would result in a manifest breach of the freedom of expression, as protected by Article 11 of the Charter.

Role of the Charter in the reasoning

The Court emphasized that Article 11 of the Charter must be considered when assessing the enforcement of foreign judgments that may infringe on freedom of expression.

Impact of the decision

This ruling underscores the importance of balancing mutual recognition of judgments with the protection of fundamental rights, potentially influencing how courts across the EU handle similar cases.

Implementation of the decision

The decision provides guidance for national courts in assessing the compatibility of foreign judgments with fundamental rights, particularly freedom of expression.

Link

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62022CJ0633

Case number

C-516/17

Decision date

29.07.2019.

Deciding Body

Court of Justice of the European Union, Grand Chamber

Parties

Spiegel Online GmbH v. Volker Beck

Facts

Spiegel Online published a manuscript by politician Volker Beck, leading to a dispute over copyright and freedom of expression.

Procedural history

The German Federal Court of Justice referred questions to the CJEU regarding the interpretation of exceptions to copyright under the InfoSoc Directive and their compatibility with the Charter.

Legal issue

Whether the publication falls under exceptions to copyright for reporting current events and quotations, and how these exceptions align with Article 11 of the Charter.

Decision

The CJEU held that the exceptions must be interpreted in a manner that respects the balance between copyright protection and freedom of expression.

Role of the Charter in the reasoning

Article 11 of the Charter was pivotal in assessing the scope of exceptions to copyright, ensuring that freedom of expression is not unduly restricted

Impact of the decision

The ruling clarified the application of copyright exceptions in the context of journalistic

reporting, reinforcing the protection of media freedom.

Implementation of the decision

National courts are guided to interpret copyright exceptions in light of the Charter, particularly when assessing journalistic activities.

Link

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62017CJ0516

Case number

C-719/18

Decision date

03.09.2020.

Deciding Body

Court of Justice of the European Union, Grand Chamber

Parties

Vivendi SA v. Autorità per le Garanzie nelle Comunicazioni

Facts

Vivendi challenged Italian legislation that restricted its ability to acquire media companies, arguing that it infringed on freedom of establishment and media pluralism.

Procedural history

The Regional Administrative Court of Lazio referred questions to the CJEU concerning the compatibility of the legislation with EU law and the Charter.

Legal issue

Whether national legislation restricting media ownership violates Article 11(2) of the Charter, which guarantees freedom and pluralism of the media.

Decision

The CJEU held that while Member States can impose restrictions to ensure media pluralism, such measures must be proportionate and respect fundamental freedoms.

Role of the Charter in the reasoning

Article 11(2) of the Charter was central in evaluating the legitimacy and proportionality of the restrictions imposed by national law.

Impact of the decision

The ruling provides a framework for assessing national measures affecting media ownership, balancing market freedoms with the need to preserve media pluralism.

Implementation of the decision

Member States must ensure that any restrictions on media ownership are justified, proportionate, and in line with the Charter.

Link

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CJ0719

Case number

C-131/12

Decision date

13.05.2014.

Deciding Body

Court of Justice of the European Union, Grand Chamber

Parties

Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González

Facts

Mario Costeja González requested the removal of links to a newspaper article about his past debts, invoking his right to be forgotten.

Procedural history

The Spanish National High Court referred questions to the CJEU regarding the applicability of EU data protection law to search engines and the balance with freedom of expression.

Legal issue

Whether individuals have the right to request the removal of personal data from search engine results under EU law, and how this right balances with freedom of expression.

Decision

The CJEU recognised the right to request the removal of personal data from search engine results, subject to certain conditions, balancing privacy rights with freedom of expression.

Role of the Charter in the reasoning

Articles 7 and 8 of the Charter (respect for private life and protection of personal data) were weighed against Article 11 (freedom of expression) to achieve a fair balance.

Impact of the decision

This landmark ruling established the "right to be forgotten" in the EU, significantly impacting data protection and freedom of expression online.

Implementation of the decision

Search engines operating in the EU must assess and potentially remove links to personal data upon request, considering the balance between privacy and public interest

Link

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0131

Case number

C-201/13

Decision date

03.09.2014.

Deciding Body

Court of Justice of the European Union, Grand Chamber

Parties

Johan Deckmyn and Vrijheidsfonds VZW v. Helena Vandersteen and Others

Facts

Johan Deckmyn distributed calendars featuring a modified cover of a comic book, leading to a dispute over whether the use qualified as a parody under copyright law.

Procedural history

The Brussels Court of Appeal referred questions to the CJEU regarding the definition of parody under the InfoSoc Directive and its compatibility with the Charter.

Legal issue

What constitutes a parody under EU copyright law, and how does this relate to freedom of expression under the Charter?

Decision

The CJEU defined parody as a work that evokes an existing work while being noticeably different and constitutes an expression of humour or mockery, emphasising the need to balance rights.

Role of the Charter in the reasoning

Article 11 of the Charter was considered in interpreting the scope of the parody exception, ensuring that freedom of expression is upheld.

Impact of the decision

The ruling clarified the concept of parody in EU law, influencing how Member States interpret exceptions to copyright in light of freedom of expression.

Implementation of the decision

National courts must apply the CJEU's definition of parody, balancing copyright protection with freedom of expression.

Link

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62013CJ0201

National Courts

Case number

Not publicly disclosed

Decision date

02.2021.

Deciding Body

Office of Competition and Consumer Protection (UOKiK)

Parties

PKN Orlen v. UOKiK

Facts

State-owned oil company PKN Orlen acquired Polska Press, a major regional media group, raising concerns over media pluralism and state influence.

Procedural history

The acquisition was approved by UOKiK, despite objections from media freedom advocates and civil society organisations.

Legal issue

Whether the acquisition violated Article 11(2) of the EU Charter by undermining media pluralism.

Decision

UOKiK approved the acquisition, stating it did not significantly restrict competition.

Role of the Charter in the reasoning

Critics argued that UOKiK failed to consider the implications for media freedom under the Charter.

Impact of the decision

The case highlighted the need for regulatory bodies to assess media pluralism in merger decisions.

Implementation of the decision

The acquisition proceeded, leading to concerns over editorial independence in regional media.

Link

N/A

Case number

Not publicly disclosed (Warsaw District Court)

Decision date

N/A

Deciding Body

Warsaw District Court

Parties

Professor Wojciech Sadurski (plaintiff/defendant, depending on case framing) v. Telewizja Polska (TVP)

Facts

Professor Wojciech Sadurski, a constitutional law scholar, publicly referred to TVP as "Goebbelsian media" and accused the broadcaster of spreading propaganda, particularly in the context of reporting on government critics and the judiciary. TVP brought a defamation lawsuit against him, arguing that his statements harmed its reputation.

Procedural history

The case was filed in 2019 by TVP as a civil defamation lawsuit. Professor Sadurski defended his statements as part of protected academic and political speech. The litigation gained national and international attention as an example of a SLAPP (Strategic Lawsuit Against Public Participation). The Warsaw District Court ruled in December 2022, rejecting TVP's claims.

Legal issue

Whether Professor Sadurski's statements constituted unlawful defamation or were protected under freedom of expression and academic freedom, including under EU and ECHR standards.

Decision

The court ruled in favour of Professor Sadurski, concluding that his comments were part of legitimate public discourse. It emphasised the importance of critical speech in democratic society, especially when it targets public institutions.

Role of the Charter in the reasoning

The court's reasoning was aligned with the standards of Article 11 of the EU Charter of Fundamental Rights (freedom of expression and information), even though the Charter was not the primary legal basis. The court recognised European fundamental rights standards in assessing the balance between reputation and free speech.

Impact of the decision

While the court did not base its ruling explicitly on the Charter, the principles enshrined in Article 11 were implicitly respected and paralleled in the legal reasoning. The court's reference to the importance of European legal standards, including ECHR jurisprudence and EU values, shows that the Charter's framework influenced the broader legal context. The decision has had a significant impact on jurisprudence related to media freedom and academic expression in Poland. It was interpreted as a victory for academic freedom and an important precedent against SLAPPs intended to intimidate critics of government-aligned media

Implementation of the decision

The ruling concluded the civil case, with no appeal publicly reported. It marked an important moment in resistance to state-influenced media intimidation tactics and has been cited by press freedom organizations as a successful example of strategic litigation in defense of public discourse.

Link

N/A

Case number

Not publicly disclosed

Decision date

09.2021

Deciding Body

National Broadcasting Council (KRRiT)

Parties

TVN24 (a U.S.-owned news channel) v. KRRiT

Facts

TVN24, owned by U.S.-based Discovery Inc., faced delays in the renewal of its broadcasting license, raising concerns over media freedom and political interference.

Procedural history

The case involved administrative proceedings before KRRiT, with public debates and political discussions influencing the process.

Legal issue

Whether the delay in license renewal constituted a violation of media freedom under Article 11 of the EU Charter.

Decision

KRRiT eventually renewed the license, but the delay was criticised as politically motivated.

Role of the Charter in the reasoning

While the Charter was not directly invoked in the decision, the case highlighted concerns over compliance with Article 11 regarding media pluralism.

Impact of the decision

The case underscored the vulnerability of media outlets to political pressure and the need for safeguards to protect media freedom.

Implementation of the decision

The license renewal allowed TVN24 to continue broadcasting, but the incident prompted discussions on legislative reforms to protect media independence.

Link

N/A

Case number

Not publicly disclosed

Decision date

06.2024.

Deciding Body

Warsaw Regional Court

Parties

MWE Networks v. KRRiT

Facts

The National Broadcasting Council had allocated a multiplex slot to TV Republika and wPolsce24. MWE Networks, the broadcaster of Polska24, appealed this decision, arguing that the allocation process was flawed.

Procedural history

The Warsaw Regional Court reviewed the appeal and found in favour of MWE Networks.

Legal issue

Whether the allocation of multiplex slots by KRRiT adhered to principles of fairness and transparency.

Decision

The court overturned KRRiT's decision, ruling that the allocation process was improper, and ordered the Council to reimburse MWE Networks for legal costs.

Role of the Charter in the reasoning

While the EU Charter of Fundamental Rights was not explicitly cited, the court's decision aligns with principles of media pluralism and freedom of expression.

Impact of the decision

This ruling underscores the necessity for transparent and fair processes in media licensing, reinforcing the importance of media pluralism.

Implementation of the decision

KRRiT was required to re-evaluate the allocation process and comply with the court's directives.

Link

N/A

Case number

K 29/23

Decision date

15.12.2023.

Deciding Body

Constitutional Tribunal of the Republic of Poland

Parties

Law and Justice (PiS) party members v. Polish Government

Facts

Following the October 2023 parliamentary elections, the newly formed government initiated changes in the management of public media outlets, including Telewizja Polska (TVP), Polskie Radio, and the Polish Press Agency (PAP). The government aimed to replace the existing boards, citing the need to restore impartiality and independence in public broadcasting.

Procedural history

In response to these actions, members of the PiS party filed a motion with the Constitutional Tribunal, seeking to prevent the government from making changes to the management of public media.

Legal issue

Whether the government's actions to alter the management of public media entities were constitutional and adhered to the legal frameworks governing public broadcasting.

Decision

The Constitutional Tribunal issued an interim order preventing the government from making major changes to the management of public broadcasters until a full hearing could be conducted.

Role of the Charter in the reasoning

While the EU Charter of Fundamental Rights was not explicitly cited, the case touches upon principles enshrined in the Charter, such as freedom of expression and information (Article 11).

Impact of the decision

The interim order temporarily halted the government's efforts to reform public media management, leading to a standoff between the government and the Constitutional Tribunal. This situation underscored the complexities involved in balancing governmental reforms with constitutional safeguards.

Implementation of the decision

Despite the Tribunal's order, the government proceeded with its planned changes, arguing that the Tribunal's composition lacked legitimacy due to previous controversies over judicial appointments. This led to a constitutional crisis and debates over the rule of law in Poland.

Link

N/A

Annex 4. Equality case law databases

CJEU

Case number
C-157/1

Decision date
14.03.2017.

Deciding Body
Court of Justice of the European Union, Grand Chamber

Parties
Samira Achbita and the Centrum voor gelijkheid van kansen en voor racismebestrijdingv. G4S Secure Solutions NV

Facts
The applicant, a Muslim woman, was employed as a receptionist by the respondent, a private company in Belgium. The company had an unwritten policy prohibiting employees from wearing visible signs of their political, philosophical or religious beliefs at work. In April 2006 the applicant informed her employer that she intended to wear a headscarf during working hours. The respondent subsequently adopted a formal internal rule banning the wearing of any visible religious symbols in the workplace. As a result, the applicant was dismissed from her job in June 2006 for her refusal to comply with the policy. The applicant challenged her dismissal before the Belgian courts, arguing that it constituted discrimination on the grounds of religion. The Belgian Court of Cassation referred the case to the CJEU for a preliminary ruling on whether the company's policy constituted direct discrimination under EU Law.

Procedural history
The case was initially heard by the Antwerp Labor Court, which upheld G4S's decision to dismiss the applicant. The applicant appealed the decision before the Antwerp Labor Court of Appeal. The Labor Court of Appeal confirmed this decision, stating that the company's policy applied to all employees equally and did not constitute direct WP 6 – Legal capacity-building 2 discrimination. The applicant took the case to the Belgian Court of Cassation, which then referred the case to the CJEU, asking for a preliminary ruling on the interpretation of the relevant provisions of Directive 2000/78/EC, which establishes a general framework for equal treatment in employment and occupation.

Legal issue

The primary legal issues were the following:Whether the internal rule of G4S prohibiting the wearing of visible signs of political, philosophical or religious beliefs at work constituted direct discrimination based on religion under Article 2(2)(a) of Directive 2000/78/EC.Whether such rule could be considered indirect discrimination under Article 2 (2)(b) of the Directive, and if so, whether it could be justified by a legitimate aim, such as maintaining a policy of neutrality.

Decision

The CJEU ruled that the internal rule of G4S, which prohibited the wearing of any visible signs of political, philosophical or religious beliefs, did not constitute direct discrimination under Article 2(2)(a) of Directive 2000/78/EC. However, the Court found that the rule could constitute indirect discrimination under Article 2(2)(b) if it placed individuals of a particular religion or belief at a particular disadvantage. Such indirect discrimination could be justified if it was based on a legitimate aim (such as maintaining neutrality) and if the means of achieving that aim were appropriate and necessary.

Role of the Charter in the reasoning

The Charter of Fundamental Rights of the European Union was considered in the broader context of interpreting the provisions of Directive 2000/78/EC. The Court referred to the Charter, particularly Article 10 (Freedom of thought, conscience and religion) and Article 16 (Freedom to conduct a business) to balance the rights of individuals to express their religious beliefs against the rights of the employers to pursue a policy of neutrality. The Court used the Charter as a guide to interpret EU Law, specifically Directive 2000/78/EC, rather than as a direct legal basis. The Charter had a significant impact on the decision as it provided the framework for balancing competing rights under EU Law, i.e., the rights to religious expression and the freedom to conduct a business. The Court's reasoning was influenced by the need to ensure that any restrictions on religious expression were justified, necessary and proportionate.

Impact of the decision

This decision has had a significant impact on jurisprudence surrounding religious discrimination in the workplace across the EU. It clarified the conditions under which employers can enforce policies of neutrality and provided guidelines for assessing whether such policies are proportionate and justified. The ruling has been cited in subsequent cases dealing with similar issues and has influenced the development of both EU and national anti-discrimination laws.

Implementation of the decision

Following the decision, national courts have had to ensure that their rulings are consistent with the principles established by the CJEU in this case. Employers have also been advised to carefully consider the proportionality and consistency of their neutrality policies to avoid potential claims of indirect discrimination. Following the CJEU's answer, the Court of Cassation upheld the decision of the Antwerp Labor Court, ruling that the dismissal was lawful. The Court concluded that the employer's policy of neutrality, which banned the wearing of visible religious symbols, was not inherently discriminatory as it applied equally to all employees, and it justified the legitimate aim of maintaining neutrality. Thus, the Court of Cassation decided the case by confirming that the employer's policy did not violate EU anti-discrimination law as interpreted by the CJEU, as long as the policy was applied consistently and proportionately.

Link

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62015CJ0157

Case number

C-246/17

Decision date

27.06.2018.

Deciding Body

Court of Justice of the European Union

Parties

Ibrahima Diallov. Belgian State

Facts

The applicant, a Guinean national, applied for a residence card as a family member of a citizen of the European Union under Directive 2004/38. The Belgian authorities rejected the application beyond the six-month deadline stipulated by EU Law. The applicant argued that the decision's timing violated her rights under EU Law

Procedural history

First, the applicant's application was rejected by the Belgian State. The Foreigners Litigation Council annulled the decision for lack of motivation. Belgian authorities issued another refusal, which the applicant challenged again. The Belgian Council of State referred the case to the CJEU for a preliminary ruling regarding the interpretation of Directive 2004/38, particularly the six-month deadline for processing residence card applications.

Legal issue

The central legal issues were:Whether the Belgian authorities violated EU Law by not adopting and notifying a decision within the six-month period required by the Directive 2004/38/EC for processing applications for residence cards for family members of EU citizens. The case specifically concerned whether the authorities' failure to issue a decision within this timeframe automatically granted the applicant the right to a residence card, even if the substantive conditions for such a right were not met. Whether the principle of effectiveness in EU Law would prevent Belgian authorities from resetting the six-month deadline following the annulment of a previous decision.

Decision

The CJEU held that the Belgian authorities were required to adopt and notify the decision within the six-month period. The Court found that the directive does not allow for the notification of the decision after this period. The CJEU ruled that the decision regarding the application for a residence card must be adopted and notified within the six-month deadline set by the Directive 2004/38/EC. The Court also held that the directive does not support automatic approval of the residence card due to administrative silence.

Role of the Charter in the reasoning

The questions posed by the Council of State from Belgium included references to the Charter of Fundamental Rights of the EU, particularly Articles 7, 24, 41 and 47, which concern respect for private and family life, the rights of the child, the right to good administration, and the right to an effective remedy and to a fair trial. The Charter was referenced, particularly regarding the right to good administration (Article 41) and the right to an effective remedy (Article 47). Since the case directly implicated the rights of an individual under EU Law, the Charter was relevant for interpreting those rights, particularly concerning procedural guarantees and the right to an effective remedy. The Court applied the Charter in interpreting the relevant EU directive and ensuring that the rights of the applicant were protected under EU Law. The CJEU applied the Charter directly in its interpretation of EU Law to assess the legality of the Belgian's authorities'actions concerning the applicants' rights to residence and the procedural safeguards that should have been afforded to her.

Impact of the decision

The decision underscored the importance of adhering to procedural deadlines in migration cases within the EU, reinforcing the legal certainty for applicants and ensuring that their rights under EU Law are respected. It influenced how national authorities process such applications in the future, ensuring compliance with EU Law.

Implementation of the decision

Following the decision, it is expected that Belgian and other Member States will ensure stricter adherence to the six month deadline for processing residence card applications for family members of EU citizens.

Link

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62017CA0246

Case number

C-233/18

Decision date

12.11.2019.

Deciding Body

Court of Justice of the European Union, Grand Chamber

Parties

Zubair Haqbinv. Federaal Agentschap voor de opvang van asielzoekers (Fedasil)

Facts

The case concerned the temporary exclusion of the applicant, an unaccompanied minor from Afghanistan, from material reception conditions for 15 days provided by Fedasil in Belgium. This exclusion followed an altercation in a reception center. He challenged this exclusion, arguing it violated EU Law, particularly Directive 2013/33/EU on standards for the reception of applicants for international protection. The legal question was whether such sanctions, particularly against vulnerable individuals like unaccompanied minors, were consistent with EU Law, particularly Directive 2013/33/EU, and the EU Charter of Fundamental Rights.

Procedural history

The applicant's exclusion was initially confirmed by the director-general of Fedasil. His guardian unsuccessfully sought suspension of the exclusion before the Labor Tribunal in Antwerp. The case was then handled by Brussels Labor Court, with the applicant, now of age, appealing against the exclusion from material reception conditions. The Labor Court of Brussels then referred questions to the CJEU for a preliminary ruling, regarding the interpretation of Directive 2013/33/EU and the Charter of Fundamental Rights of the EU

Legal issue

The primary legal issues addressed:Whether EU Law, and more precisely Article 20(4) of Directive 2013/33/EU, allows member States to impose sanctions that reduce or withdraw material reception conditions for asylum seekers, including unaccompanied minors, due to serious breaches of rules or violent behavior in accommodation centers.

Whether such sanctions could be consistent with ensuring a dignified standard of living, as required under EU Law.

Decision

The CJEU ruled that member States cannot impose sanctions that withdraw material reception conditions related to housing, food or clothing if it deprives the applicant of meeting their most basic needs. Any sanctions must ensure a dignified standard of living and consider the best interests of the child.

Role of the Charter in the reasoning

The Court referred to the Charter of Fundamental Rights of the EU to ensure respect for human dignity (Article 1) in the application of Directive 2013/33/EU. The Charter was found to be applicable by the Court, which used it as a legal basis to ensure compliance with EU Law and the protection of fundamental rights

Impact of the decision

The decision had a significant impact on the jurisprudence related to the treatment of asylums seekers in the EU, particularly regarding the limitations on member States' ability to impose sanctions that affect material reception conditions.

Implementation of the decision

Following the ruling of the CJEU in the case C-233/18, member States are required to adjust their practices to ensure that any sanctions imposed do not deprive asylum seekers of their basic needs.

Link

https://curia.europa.eu/juris/document/document.jsf?text=&docid=220532&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6903150

National Courts

Case number

17/2009

Decision date

12.02.2009.

Deciding Body

Constitutional Court of Belgium

Parties

ASBL "Ligue des Droits de l'Homme," Mr. Luc Beyer de Ryke, and others v. The Belgian State, represented by the Council of Ministers

Facts

The case arose from a challenge to the constitutionality of several provisions in three key Belgian laws: the Law of 30 July 1981 on repressing certain acts inspired by racism or xenophobia (Articles 1 to 34); the Law of 10 May 2007 on combating certain forms of discrimination (Articles 2 to 49 and 52); the Law of 10 May 2007 on combating discrimination between women and men (Articles 2 to 39). The applicants argued that certain provisions in these laws infringed on fundamental freedoms, particularly their freedom of expression, and were disproportionate in scope. The applicants were therefore directly and personally affected by the laws in question because these laws had the potential to restrict their fundamental rights. They also argued that these laws could potentially criminalise expressions of opinions that were not intended to incite hatred or discrimination, and create a chilling effect, especially when expressing controversial or politically sensitive views. However, they were not directly sanctioned under the laws at the time they brought the case. Instead, they challenged the constitutionality of the laws preemptively to avoid potential future sanctions. The interference with their rights was not actualised but was rather based on the potential for these laws to be applied in a manner that could infringe on their right to freedom of expression

Procedural history

The applicants filed a request before the Belgian Constitutional Court, seeking annulment of specific provisions in the aforementioned laws, arguing they were unconstitutional. The case involved a direct petition to the Constitutional Court, as any natural person or legal entity directly and personally affected by the laws can challenge their constitutionality. This Court has the competence to directly review

the constitutionality of laws without requiring the exhaustion of other remedies first. Specifically, the Belgian Constitutional Court's primary competence is to review laws for compliance with the Constitution, particularly in relation to fundamental rights. This Court can indeed annul laws or specific provisions of laws if they are found to be unconstitutional.

Legal issue

The primary legal issues were the following:Whether the provisions of the challenged laws disproportionately infringed upon the right to freedom of expression as protected by the Belgian Constitution.Indeed, the applicants contended that the laws were too broad and could criminalise expressions that were not intended to incite hatred or discrimination, thus chilling free speech. They had not yet faced any sanctions or actual interference with rights under the laws, but they argued that the laws' broad and vague provisions could be used to penalise individuals for expressing opinions in the future, even when those opinions were not intended to harm others. This potential overreach was seen as a disproportionate restriction on their right to freely express themselves. The applicants were considered to have a potential victim status. Whether the provisions were consistent with the principles of legality and legal certainty. The applicants claimed that the laws' vague definitions and broad application could lead to arbitrary enforcement, thereby violating the principles of legality and legal certainty. The provisions in question were those that criminalised certain forms of expression or behaviour without clear and precise definitions of what constituted an offence. The lack of clarity made it difficult for individuals to predict whether their actions might be deemed illegal, leading to uncertainty and potential unjust penalties.Whether the laws were consistent with the Charter of Fundamental Rights of the European Union, particularly in the context of protecting the rights of individuals from racism and xenophobia. The applicants argued that the challenged laws were inconsistent with the Charter, particularly in how they protected freedom of expression versus the need to combat racism and xenophobia. The provisions that criminalised certain expressions were seen as overly broad, potentially infringing on rights guaranteed under the Charter.

Decision

The Constitutional Court upheld the constitutionality of the challenged provisions. The Court found that the laws were a legitimate and proportionate means to combat racism, xenophobia and discrimination, and did not unduly infringe upon freedom of expression.

Role of the Charter in the reasoning

The applicants did not primarily base their arguments on the Charter of Fundamental Rights of the EU. However, the Court referred to the Charter as part of its reasoning, using it as a guide to interpret the national constitution and ensure that Belgian laws were consistent with EU obligations. The Court relied on the Charter, particularly Article 10, to reinforce the importance of the anti-discrimination laws and their alignment with EU standards

Impact of the decision

This decision is a precedent in Belgium for several reasons:It reaffirms the compatibility of strong anti-discrimination laws with constitutional rights, such as freedom of expression.It underscores the role of the Charter of Fundamental Rights of the EU in guiding national courts in balancing fundamental rights against the need to protect vulnerable groups from racism and xenophobia.The case has been cited in subsequent cases involving discrimination and the balance between freedom of expression and the need to combat hate speech

Implementation of the decision

The decision confirmed the validity of existing legislation, so no new implementation measures were required beyond continued enforcement of the anti-discrimination laws.

Link

https://www.const-court.be/public/f/2009/2009-017f.pdf

Case number

40/2009

Decision date

11.03.2009.

Deciding Body

Constitutional Court of Belgium

Parties

Jurgen Ceder, Frank Vanhecke, Gerolf Annemans, Filip Dewinter, Joris van Hauthem (all of them politicians) and the non-profit organization "Liga voor Mensrechten" v. the Belgian government, represented by the Council of Ministers

Facts

The case concerned the constitutionality of the Law of 10 May 10 2007, which amended the Law of 30 July 1981 aimed at repressing certain acts inspired by racism and xenophobia. The amendments expanded the scope of the law, incorporating broader measures against discrimination, particularly in the areas of incitement to discrimination and dissemination of ideas based on racial superiority or hatred. The applicants claimed that the law infringed upon their right to freedom of expression, arguing that the provisions were too vague and broad, potentially criminalising legitimate political discourse, especially regarding sensitive topics like immigration and asylum policies.

Procedural history

The applicants filed a direct petition with the Constitutional Court seeking the annulment of specific provisions of the law (Articles 10, 17 to 18, 20, 21 to 25 and 30 to 32), arguing that these provisions were unconstitutional. The Belgian Constitutional Court has the competence to review the constitutionality of laws and to annul provisions that violate the Constitution. There was no requirement for the applicants to exhaust other legal remedies before filing their request before the Constitutional Court. In this case, it is worth noting that the Constitutional Court of Belgium joined two cases (4312 and 4355) for the purpose of rendering a single decision on the constitutionality of the 2007 anti-discrimination Law.

Legal issue

The primary legal issue was:Whether these provisions that criminalised "incitement to discrimination" and "dissemination of ideas based on racial superiority" disproportionately restricted freedom of expression. The law under attack constitutes, according to the applicants, a serious violation of the freedom of expression of representatives of legislatives assemblies. In fact, the crucial notions which are used in this law are so vague and broad that all the proposed policies relating to asylum, immigration and Islam could be accused by opponents of "incitement to discrimination" within the meaning of the law. Whether these provisions complied with principles of legality and legal certainty. The applicants claimed that the broad language of the law could also lead to arbitrary enforcement, making it difficult for individuals to know if certain expressions might be deemed illegal.

Decision

The Constitutional Court upheld the constitutionality of the challenged provisions. It found that these restrictions were justified as necessary measures to combat racism, xenophobia and discrimination.

Role of the Charter in the reasoning

The applicants did not reference the Charter of Fundamental Rights of the European Union in their arguments. However, the Court referred to the Charter primarily as a guide to ensure that national laws were interpreted consistently with EU human rights standards. However, the Charter was not the primary legal basis for the decision, it was rather used to support the interpretation of the Belgian Constitution.

Impact of the decision

The decision reaffirmed the compatibility of strong anti-discrimination laws with constitutional rights, particularly freedom of expression. Anti-discrimination laws can limit freedom of expression, provided these limitations are necessary and proportionate. The decision is influential in shaping the balance between free speech and the need to combat hate speech and discrimination in Belgian jurisprudence.

Implementation of the decision

The decision upheld the validity of the existing legislations, so no new implementation measures were required. The anti-discrimination laws continued to be enforced as before.

Link

https://nl.const-court.be/public/f/2009/2009-040f.pdf

Case number

81/2020

Decision date

04.06.2020.

Deciding Body

Constitutional Court of Belgium

Parties

Several students (who wish to wear religious symbols, such as the headscarf, at school) v. City of Brussels and the Haute Francisco Ferrer

Facts

This case revolves around a decree from the French Community of Belgium, which imposed a prohibition on wearing religious, political or philosophical symbols in public education institutions. The applicants, who are students at the "Haute Ecole Francisco Ferrer" and wish to wear headscarves as part of their religious practice, challenged this prohibition.

Procedural history

The applicants filed a complaint before the President of the Francophone Court of First Instance in Brussels, seeking to halt the application of the decree. The Court of First Instance referred the question to the Belgian Constitutional Court, asking whether the prohibition is compatible with various constitutional and international human rights norms. No specific remedies are mentioned that needed to be exhausted before bringing the case to the Constitutional Court, as this a prejudicial question.

Legal issue

The central legal issue is whether the prohibition on wearing religious symbols, particularly headscarves, in public educational institutions violates the rights to freedom of religion, freedom of expression and the right to education as protected by the Belgian Constitution, the ECHR and the Charter of Fundamental Rights of the EU. The applicants argue that the prohibition constitutes an unjustified interference with their religious freedom and their right to express their beliefs.

Decision

The Constitutional Court ruled that the prohibition is not inherently unconstitutional but must be applied in a manner that respects the proportionality principle. The Court did not completely invalidate the prohibition but indicated that it should not be applied in a manner that disproportionately affects the rights of students, particularly those from minority religious backgrounds

Role of the Charter in the reasoning

The Charter was mentioned by the applicant in the context of evaluating the proportionality of the restriction on religious freedom. The Court referred to the Charter to assess whether the prohibition on religious symbols, as applied in this case, was consistent with the fundamental rights protected under EU Law, including freedom of religion and non-discrimination.The Court found the Charter applicable, particularly in relation to Articles 10 (Freedom of Thought, Conscience and Religion) and 21 (Non-discrimination). The Charter was therefore found to be applicable in this specific case because the Belgian Law in question was implementing EU Law.

Impact of the decision

The decision had a significant impact on the jurisprudence concerning religious freedom and the principle of neutrality in education. It set a precedent for how the proportionality of restrictions on religious symbols should be assessed in Belgian law.

Implementation of the decision

The decision's emphasis on proportionality suggested that educational institutions in Belgium may need to review and potentially adjust their policies on religious symbols to ensure compliance with this ruling.

Link

https://www.const-court.be/public/f/2020/2020-081f.pdfc

Case number

135/2019

Decision date

17.10.2019.

Deciding Body

Constitutional Court of Belgium

Parties

ASBL Ligue des Droits de l'Homme (now known as Ligue des droits humains) v. The Belgian State, represented by the Council of Ministers

Facts

The case challenged the constitutionality of the Belgian Law of 25 December 2016, known as the "Passenger Name Record (PNR) Law". This Law mandates the collection and processing of passenger data for various forms of transport to prevent and detect terrorist offence and serious cross-border crime. The applicants argued that the Law infringed on fundamental rights, particularly the right to privacy, and did not adequately safeguard the data of passengers. They claimed that the Law was disproportionate and provided too much discretion to the executive branch, potentially leading to abuses.

Procedural history

The Ligue des Droits de l'Homme filed a direct petition to the Belgian Constitutional Court seeking the annulment of the Law, or parts of it, claiming it violated several constitutional provisions and the European Convention on Human Rights (ECHR). No specific remedies were mentioned that needed to be exhausted before bringing the case to the Constitutional Court. The Court has the competence to directly review the constitutionality of laws without requiring the exhaustion of other remedies first. Specifically, the Belgian Constitutional Court's primary competence is to review laws for compliance with the Constitution, particularly in relation to fundamental rights. The Court can indeed annul laws or specific provisions of laws if they are found to be unconstitutional

Legal issue

The central legal issue was whether the PNR Law violated the right to privacy and data protection as protected by the Belgian Constitution, the Charter of Fundamental Rights of the EU and the ECHR. The applicants contended that the Law's provisions were overly broad and lacked sufficient legal safeguards.

Decision

The Constitutional court found that certain provisions of the Law were unconstitutional. Specifically, it concluded that the Law did not provide adequate safeguards to ensure that the collection and processing of passenger data were proportionate and necessary for achieving the Law' stated goals. As a result, the Court annulled specific provisions of the Law.

Role of the Charter in the reasoning

The applicant referenced the Charter, particularly Articles 7 (Respect for private and family life) and 8 (Protection of personal data). The Court also referred to the Charter to assess whether the Law's provisions were consistent with the fundamental rights protected under EU Law, particularly regarding privacy and data protection. The Court found the Charter applicable, especially in evaluating the proportionality and necessity of the restrictions imposed by the Law, because the Belgian law in question was implementing EU standards on fundamental rights.

Impact of the decision

The decision had a significant impact on the development of Belgian jurisprudence, particularly in the areas of data protection and privacy rights. It underscored the need for clear legal standards and safeguards when implementing laws that affect fundamental rights, especially in the context of national security.

Implementation of the decision

Following the decision, Belgian lawmakers would need to revise the PNR Law to ensure that it complies with the Constitutional Court's ruling and provides adequate safeguards for privacy and data protection.

Link

https://www.const-court.be/public/f/2019/2019-135f.pdf

Case number

18/2018

Decision date

22.02.2018.

Deciding Body

Constitutional Court of Belgium

Parties

Youssouf Diallo, ASBL « Association pour le Droit des Étrangers », ASBL « Ligue des Droits humains », ASBL « Mouvement contre le Racisme, l'Antisémitisme et la Xénophobie », ASBL « Coordination et Initiatives pour et avec les Réfugiés et Étrangers », ASBL « Service International de Recherche, d'Éducation et d'Action sociale » v. the Belgian State

Facts

The case revolves around the introduction of an administrative fee imposed on non-EU nationals applying for residence in Belgium. The applicants argued that this fee disproportionately affected foreigners, especially those in vulnerable positions, such as asylum seekers or those with limited financial resources. They claimed that the fee violated constitutional principles of equality and non-discrimination, as well as fundamental rights enshrined in international human rights instruments, including the right to respect for family life and the right to an effective remedy.

Procedural history

The applicants filed a request for annulment of certain provisions of the Program Law of 19 December 2014, which introduced the contested administrative fee. The case was brought directly before the Belgian Constitutional Court. The Court had to consider whether the imposition of this fee was consistent with Belgian constitutional law, including principles of equality and non-discrimination, as well as European and international human rights standards.

Legal issue

The main legal issues were the following:Whether the imposition of an administrative fee for residence applications violates the constitutional principles of equality and non-discrimination.Whether the fee interferes with the fundamental rights of non-EU nationals, particularly the right to respect for family life and the right to an effective remedy. Whether the fee constitutes a disproportionate burden on vulnerable groups, such as those with limited financial means.

Decision

The Court partially annulled the provisions concerning the administrative fee. It held that while the state has the right to impose administrative fees, these must be proportionate and not constitute an undue burden, particularly on vulnerable individuals. The Court found that the law did not provide sufficient safeguards to protect individuals who might be unable to pay the fee, thereby potentially violating their fundamental rights.

Role of the Charter in the reasoning

The Charter of Fundamental Rights of the European Union was referenced by the applicants, particularly in relation to the right to an effective remedy (Article 47). However, the Court primarily relied on the Belgian Constitution and the European Convention on Human Rights in its reasoning. The Charter was used to support the interpretation of these national and international legal standards, but it was not the primary legal basis for the Court's decision.

Impact of the decision

The decision had a significant impact on jurisprudence regarding administrative fees in Belgium. It underscored the need for such fees to be proportionate and not create barriers to access to justice or fundamental rights, particularly for vulnerable individuals. The ruling likely influenced subsequent legislation and administrative practices concerning fees for residence applications and other similar procedures.

Implementation of the decision

Following the decision, it was expected that Belgian lawmakers and administrative authorities would adjust the relevant provisions to comply with the Court's ruling. This was likely to involve introducing safeguards or exemptions for individuals who are unable to pay the administrative fee due to financial hardship.

Link

https://www.const-court.be/public/f/2018/2018-018f.pdf