

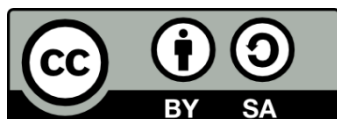


European Human Rights Law



The Notion of European Fundamental Rights and Freedoms-Chapter 2 (EC-EU LAW)

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Ευρωπαϊκή Ένωση
Ευρωπαϊκό Κοινωνικό Ταμείο



ΥΠΟΥΡΓΕΙΟ ΠΑΙΔΕΙΑΣ & ΘΡΗΣΚΕΥΜΑΤΩΝ, ΠΟΛΙΤΙΣΜΟΥ & ΑΘΛΗΤΙΣΜΟΥ
ΕΙΔΙΚΗ ΥΠΗΡΕΣΙΑ ΔΙΑΧΕΙΡΙΣΗΣ

Με τη συγχρηματοδότηση της Ελλάδας και της Ευρωπαϊκής Ένωσης



ΕΣΠΑ
2007-2013
πρόγραμμα για την ανάπτυξη
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History and Development of European Fundamental Rights and Fundamental Freedoms (1/12)

- **III. History and Development of Human Rights Protection within the EC/EU.**
 - 1. The Beginning.**
 - ✓ The European Court in Luxemburg → lack of sensitivity.
 - ✓ Doubts as to the protection of property in European Community law.



History and Development of European Fundamental Rights and Fundamental Freedoms (2/12)

2. Development of Human Rights of the EC/EU.

- **Late 1960s: Human rights: part of European Community Law.**
- “The Stauder judgment”.
- **The ECHR:**
 - ✓ “only an individualisation was required, not the mentioning of the name”.
 - ✓ “Interpreted in this way, the provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law as protected by the Court.”
 - ✓ *Arguments of Advocate General:* human rights recognized by national law → through comparative evaluation of laws → unwritten part of community Law.



History and Development of European Fundamental Rights and Fundamental Freedoms (3/12)

2. *Development of Human Rights of the EC/EU*

The Advocate General does not apply national human rights directly, but → **secondary source of cognition.**

- The *Internationale Handelsgesellschaft* case: supremacy of European Community law.
- But, the Court states : The Court assures a European human rights standard based on “**constitutional traditions common to the Member States**”.



History and Development of European Fundamental Rights and Fundamental Freedoms (4/12)

2. Development of Human Rights of the EC/EU.

- **ECHR:** “international treaties by the Member States supply **guidelines** → should be followed within the framework of Community law”.
- **The European Court of Justice**
-acknowledges the significance of the ECHR.
- ✓ **ECJ relies on ECHR** in some cases.
- The ECJ has refused to accept the ECHR as formally binding on the EC/EU.
- The ECHR → a secondary source of cognition for Community Human Rights.
- **Divergence of interpretation between the two Courts.**



History and Development of European Fundamental Rights and Fundamental Freedoms (5/12)

2. *Development of Human Rights of the EC/EU.*

- **Then, a catalogue of unwritten human rights!**
- **The German Federal Court:** constitutional complaints and requests for judicial review of statutory provisions against European Community law → inadmissible.
- **Article 6(2) of the TEU:** The Union “shall respect fundamental rights, as guaranteed by the **European Convention for the Protection of Human Rights and Fundamental Freedoms** signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.”



History and Development of European Fundamental Rights and Fundamental Freedoms (6/12)

3. Incorporation to the *ECHR*.

- A need for a written catalogue of human rights.
- An early step for **accession** to the ECHR → by **The Commission** in 1979
-but...*obstacles*.
- ✓ The 14th Prot ECHR.
- ✓ The **ECJ: negative to the formal accession of the Union to the ECHR.**
- ✓ Need for a modification of the founding Treaties.
- ✓ Thus, **The Charter of Fundamental Rights of the European Union** → the solution.
- ✓ **political intention** to accede to the ECHR in the Treaty Establishing a Constitution for Europe.



History and Development of European Fundamental Rights and Fundamental Freedoms (7/12)

4. Human Rights of the EU and the European Charter of Fundamental Rights.

- A first step: “**Declaration of fundamental rights and freedoms**” by the European Parliament.
- ❖ **The European Charter of Fundamental Rights.**
 - Negotiated by **The Convention** instituted by the European Council of Tampere (Finland) → members by national governments, members of the European Parliament, members of national Parliaments and a Commissioner.
 - *Parliamentary legitimacy.*
 - **The Charter is till then not legally binding.**
 - *Christian Walter: The Charter* → “The authoritative representation of the human rights standards of the European Union”.
- ✓ **Steps of recognition by the Courts.**



History and Development of European Fundamental Rights and Fundamental Freedoms (8/12)

- - *Human Rights of the EU and the European Charter of Fundamental Rights*
 - **Article 6(2) of the TEU** : “the Union respects the fundamental rights ...”.
 - The Court declares that in two groups of cases Member States **have to respect** Community human rights: 1) *in situations where their national authorities apply European Community law*, and 2) *when they lawfully restrict the fundamental freedoms guaranteed in European Community law*.
 - The ***Court of First Instance*** refused to indirectly review the lawfulness of Security Council resolutions on the basis of Community law human rights guarantees. (*Ch. Walter*)
- However,it saw itself “empowered to check, indirectly the lawfulness of the resolutions of the Security Council with regard to *jus cogens*.”



History and Development of European Fundamental Rights and Fundamental Freedoms (9/12)

IV. The Fundamental Freedoms of European Community Law.

- ❖ History of the term “**Fundamental Freedoms**”.
 - **Different meaning between the ECHR and the TEC.**
 - **Fundamental freedoms** → an integral part of the TEC
- ✓ subjective rights of the individual → direct applicability.
- ✓ “Horizontal effect”.
- Important decision of the ECJ : ***van Gend & Loos***.
- The **ECJ**: Community “*constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals.*”
- ✓ European Community law influenced a lot the internal legal orders of the Member States.



History and Development of European Fundamental Rights and Fundamental Freedoms (10/12)

- **The Court** interpreted fundamental freedoms *as comprehensive economic freedoms*
 -prohibiting discriminations and limitations
- **An example: The free movement of goods- free movement of workers.**
- **Ch. Walter** : *the free movement of goods has functioned as a pace setter for the other fundamental freedoms.*
- **Free movement of services.**

- **Article 18 TEC** (freedom of movement) → a fall-back fundamental right (*Walter*).
- ✓ equal treatment of all Union citizens.



History and Development of European Fundamental Rights and Fundamental Freedoms (11/12)

- fundamental freedoms binding also on private entities.
- **The direct horizontal effect against private entities.**
- ✓ *In The Angonese case.*

- ❑ **positive obligations of the state.**
- ❑ The conclusion of the EU jurisprudence is that: *The application of the*
 - *fundamental freedoms guaranteed by the Treaty is also ensured against obstacles coming from private persons.*

- ***Fundamental freedoms today*** have moved far from *their original function* to abolish discriminations based on nationality.



History and Development of European Fundamental Rights and Fundamental Freedoms (12/12)

V. Protection of Fundamental Rights and Fundamental Freedoms in Europe- an overall evaluation.

- Since 1998, (11th Prot of the ECHR), the ECHR → a **constitutional role** in the protection of human rights in Europe.

- ✓ Need for an autonomous mechanism of human rights protection.

- ✓ The European Charter of Fundamental Rights → binding effects since 2009 and the Lisbon Treaty.

- ✓ Accession of the Union to the ECHR.



Bibliography

- ***Christian Walter, The Notion of European Fundamental Rights and Freedoms, in Dirk Ehlers, European Fundamental Rights and Freedoms, De Gruyter Recht, Berlin, 2007 pages 11 ff.***



Σημείωμα Αναφοράς

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«European Human Rights Law. The Notion of European Fundamental Rights and
Freedoms-Chapter 2 (EC-EU LAW)». Έκδοση: 1.0. Θεσσαλονίκη 2014.
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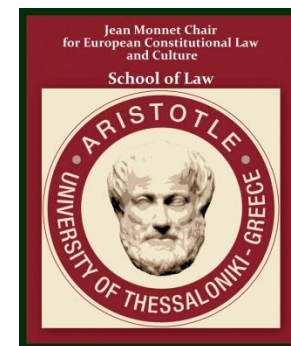
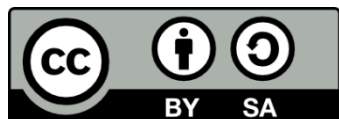
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The End

Ioannis Yannakelos

Thessaloniki, Spring 2013-2014





ΑΡΙΣΤΟΤΕΛΕΙΟ
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