



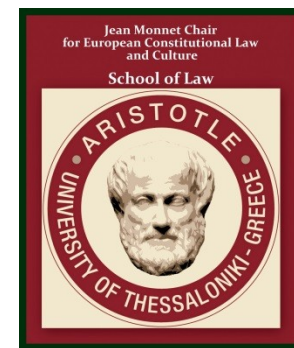
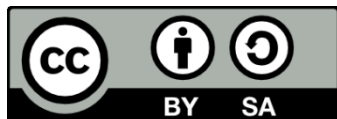
# European Constitutional Law

## Unit 6: The protection of fundamental rights at EU level

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# Περιεχόμενα ενότητας

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1. The European Union Charter of Fundamental Rights.
  1. Legal aspects.
2. Relations between Charter and ECHR.
3. Adhesion of EU to the European Convention on Human Rights.
4. ECtHR v CJEU.

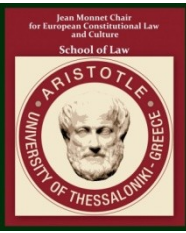


# Σκοποί ενότητας

- Analysis on the European Union Charter of Fundamental Rights, legal aspects and important provisions.
- Emphasis on adhesion of EU to the European Convention on Human Rights.



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# The protection of fundamental rights at EU level: an overview

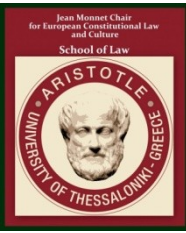
# The beginning

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- The BVerfG invitation or challenge,
  - Offering equivalent protection
- ECJ accepted the challenge.
- Extensive jurisprudence.



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# The European Union Charter of Fundamental Rights



# Charter of Fundamental Rights

## Charter of Fundamental Rights

When? 7th December 2000

Who?

- Presidents of the European Parliament.
- the Council the European Commission.
- the EU Member States (including the UK).

What?

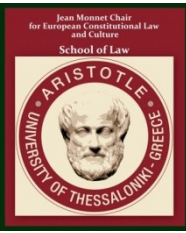
first formal EU document to combine in a single text the whole range of civil, political, economic and social rights and certain “third generation” rights such as the right to good administration or the right to a clean environment .

# Status

- At the beginning, not a treaty, constitutional or legal document.
  - had the ambiguous value of a 'solemn proclamation' by three of the Union's most important institutions.
- Became legally binding with the Treaty of Lisbon (2009).
- Its text is mainly in harmony with:
  - the Universal Declaration of Human Rights,
  - the European Convention on Human Rights.
- Can be taken as a confirmation (by the Council, Commission and Parliament) of the pre-existing rights contained there in, while adding widely-accepted principles such as the 'right' to good administration, workers' social rights, and bioethics.



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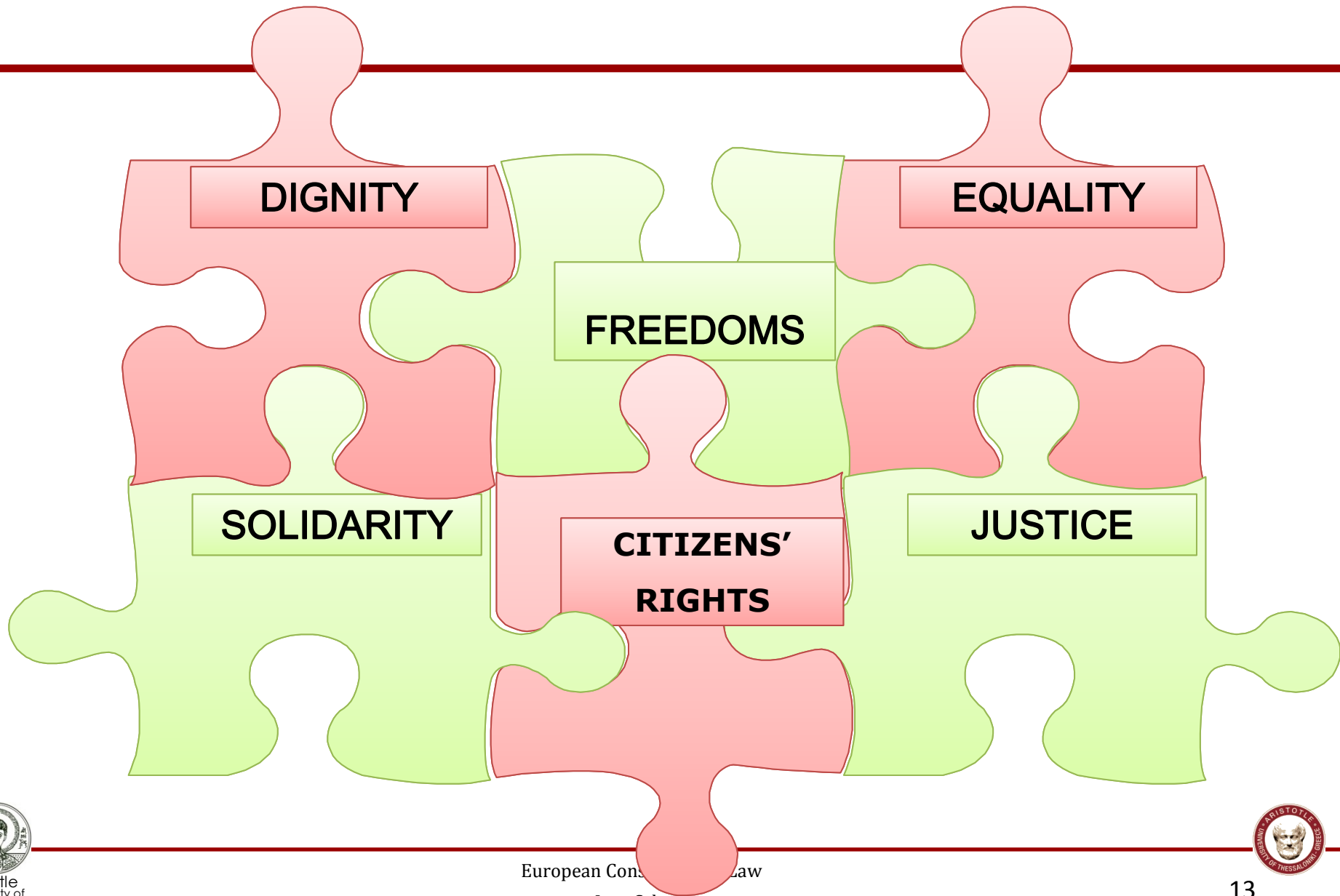


# Legal aspects

# Is the Charter part of EU law?

- ☐ YES, it is NOW directly enforceable by the EU courts or national courts when they implement EU law.
- ☐ The Charter is becoming an important reference document.
  - ☐ Art. 6 of Lisbon Treaty.

# Notable Provisions



# Rights and Principles

## ❖ Rights:

- ❖ refers to matters which are capable of immediate enforcement and should be respected at all times, e.g. the right to due process or right to freedom of expression.

## ❖ Principles:

- ❖ refers to economic social and cultural rights such as the right to work, the right to housing, the right to health care. These principles shall not be respected at all times but rather observed as cited in the legal explanations to the EU Charter.

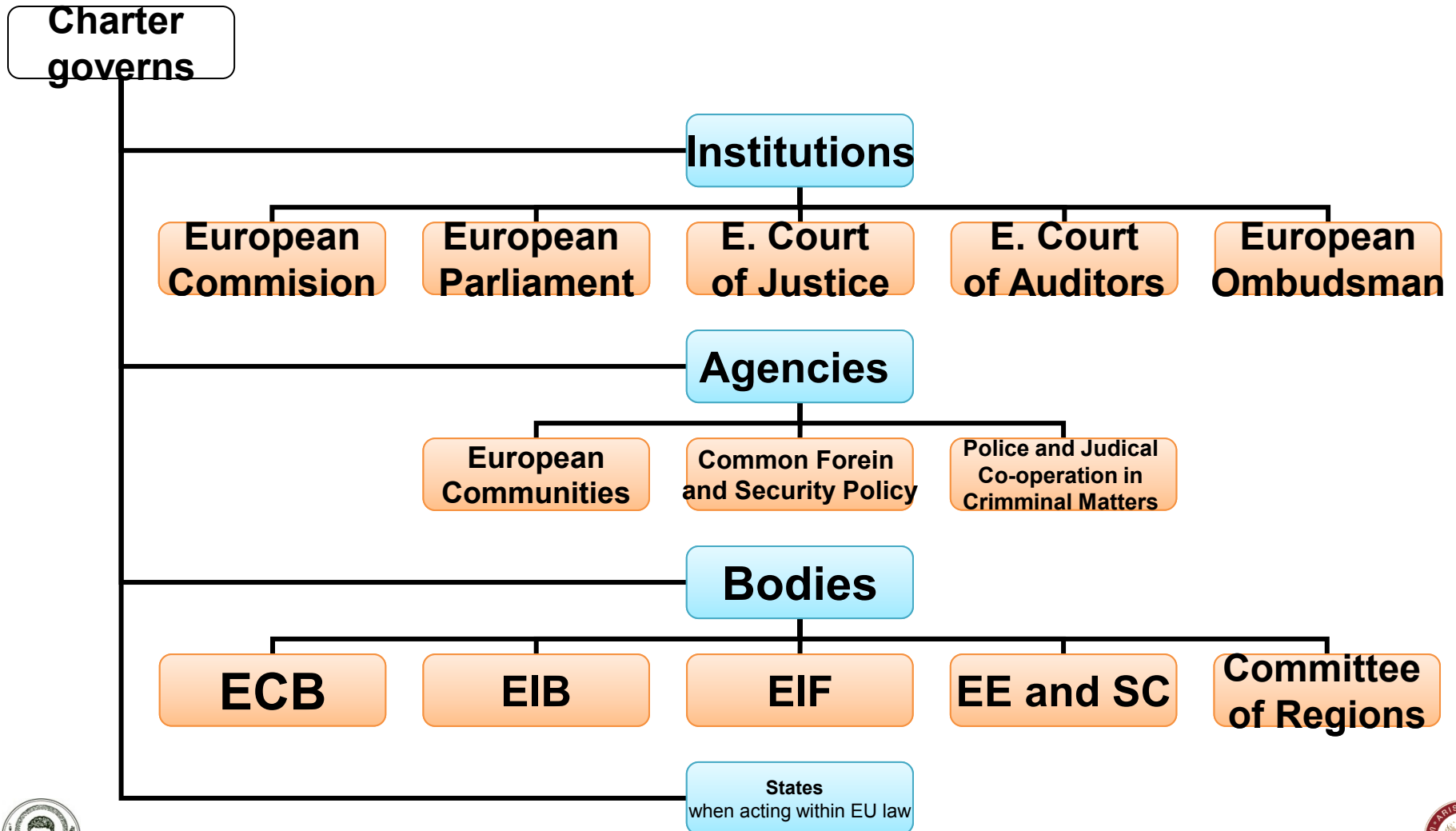
# General Provisions

**They shall therefore respect the rights,  
observe the principles  
and promote the application thereof  
in accordance with their respective  
powers  
and respecting the limits of the powers  
of the Union as conferred  
on it in the other Parts of the  
Constitution.**

**Addressed to:**

- Institutions,**
- bodies agencies of the  
Union with due regard for  
the principle of subsidiarity.**
- the Member States only  
when they are implementing  
Union law.**

# Charter Governs





# Scope of guaranteed rights

Any limitation on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the essence of those rights and freedoms.

**Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others.**

# ECtHR v ECJ

## ECtHR:

- the main safeguard for human rights protections in Europe.
- duty to monitor the implementation of these protections under the ECHR, with a jurisdiction that primarily includes questions relating to the national laws of Council of Europe member states.

## CJEU:

- the highest legal institution established by the European Union.
- mandate is rather specific:
  - to deal with any issues relating to the interpretation and
  - application of EU law,
  - or national law that derives from EU law,
  - but not national law *per se*.
  - This jurisdiction includes the fundamental freedoms and human rights within that EU law.

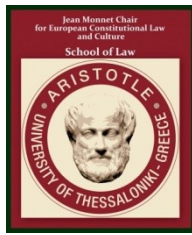
# Relations between Charter and ECHR

Charter	ECHR
signed in 2000	signed in 1950
European Union	Council of Europe (CoE) more than 40 European Countries (including Russia, Bosnia & Herzegovina, Serbia and Montenegro).
Main court of the European Union is the European Court of Justice in Luxembourg.	Applied by the national courts of each Council of Europe country and by the European Court of Human Rights ('ECtHR') in Strasbourg.

- The ECHR and the EU are separate systems of law with separate courts: the CtHR in Strasbourg and the ECJ in Luxembourg.



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**Why EU Charter go further than the European Convention of Human Rights in conferring or guaranteeing fundamental rights ?**

# EU Charter and ECHR

## ECHR

- Mostly confined to civil and political rights.
- No social rights as such.
- But also newer Protocols.
- Individuals may directly claim their rights in front of the ECtHR.
- Claims admissible if some certain criteria are satisfied including the exhaustion of all domestic remedies.

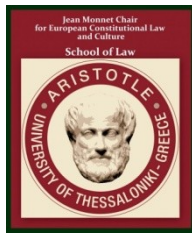
## EU Charter

- Contains both civil and political rights, and economic social and cultural rights, also some 'third generation' rights (=protect issues of global concern, such as the right to a clean environment) and modern rights (e.g prohibition of cloning and data protection).
- Extends the meaning of some traditional rights into new areas:
  - E.g, the ECHR speaks of the right of a man and woman to marry. The EU Charter, on the other hand, uses more modern language, in line with national legislation which recognises other ways of creating a family than marriage.
- Not a right of individual petition to the ECJ.
- Only recourse to Luxembourg the preliminary reference procedure
  - which enables domestic courts to consult the ECJ for rulings on points of EU law.





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the Court of Strasbourg (ECtHR) vs the Court of Luxembourg (ECJ)

# Adhesion of EU to the European Convention on Human Rights

# ECtHR v ECJ (1 out of 5)

- all Members States,
- also members to the ECHR.
- ⇒ the ECHR and the case law of the ECtHR function as pool out of which ECJ draws up rights.

# ECtHR v ECJ (2 out of 5)

- ✓ An opportunity for a possible resolution of the divergence problem arose following the 1996 decision of the Court in Bosphorus (C-84/95) where the CJEU held that the impounding of an aircraft by the Irish authorities acting under an EC regulation introduced to enforce UN sanctions against the former Yugoslavia did not contravene the respect for property rights recognised under EU law.
- ✓ The aircraft owners then took their case to the ECtHR. After a hearing, in which the European Commission was permitted to intervene as an interested party, the Strasbourg Grand Chamber pronounced judgment in June 2005. In its judgment in Bosphorus v Ireland (App no.45036/98) the ECtHR came to the same substantive result as the CJEU.



# ECtHR v ECJ (3 out of 5)

- In reaching this decision the Strasbourg Court addressed and attempted to resolve the issue of the possibility of divergence between human rights interpretation and protection as between the two courts by applying
- a presumption that the CJEU offered
  - equivalent fundamental rights protection
  - to that afforded by the ECtHR
- and so that Member States could not be found to be in breach of the ECHR if and insofar as they were (properly implementing) EU law in accordance with the fundamental rights guarantees protected by the CJEU.

# ECtHR v ECJ (4 out of 5)

Potential risks emerging out of this decision:

- down-grading real concern for individual human rights;
- equating rights of respect and dignity owed to all human beings with the economic freedoms;
- usurpation of powers by ECJ.
- In practice, ECJ and ECtHR rarely rule differently concerning the very same issues. E.G.:
  - Luxembourg decided that respect for private life and home (Art. 8-9 of ECHR) does not apply to business company. Strasbourg considers that it does.
  - According to Strasbourg, right to fair trial includes protection against self-incrimination. Luxembourg ruled otherwise.

# ECtHR v ECJ (5 out of 5)

- Article 6(2) of the Lisbon Treaty reads entails EU as such with separate legal personality for accessing to the ECHR. In that sense the article reads:
- *“The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.”*
- Therefore, EU’s submission to the jurisdiction of ECtHR will be ipso factum legal consequence of EU’s formal accession to ECHR.

# Conclusions

1. Conflict of jurisdictions between ECJ and ECtHR may be resolved by way of co-operation (both formal and informal) between the judges of these two courts.
  2. Nevertheless, EU can initiate and complete formal procedure of accession to the ECHR as a precondition of ECtHR's jurisdictional extension.
  3. It should be assured that cases against European Union may only be brought before ECtHR if internal review by CJEU has been already conducted.
- Principle of subsidiarity:
    - a procedure should be put in place,
    - in connection with the accession of the EU to the Convention,
    - to ensure that CJEU may carry out an internal review before the ECHR carries out external review.

# Bibliography

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- Hermann-Josef Blanke, Stelio Mangiameli (eds), The European Union after Lisbon - Constitutional Basis, Economic Order and External Action, 2012.

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