

Authors' Abstracts

Interpretation of the Charter of Fundamental Rights of the European Union and the influence of the Court of Justice of the European Union

Verica Trstenjak

ABSTRACT

In the European Union, fundamental rights have been regulated by the Charter of Fundamental Rights of the European Union for 10 years already, as the Charter is legally binding since 2009 and, under Article 6 of Treaty on European Union, is part of primary law and has constitutional significance at the EU level. In the article, the author discusses the importance of the Charter, as well as three areas where the Court of Justice of the EU interpreted the Charter and, in some way, »upgraded« the rights already enshrined in the Charter. The impact of the Charter on privacy and data protection was considered by the Court of Justice of the EU in case *Google Spain*. The Court ruled in favour of the right to be forgotten. In case *Schrems*, however, the Court of Justice of the EU dealt with the protection of personal data when transferring data from the EU to the US, and held that the Commission Decision 2000/520/EC is invalid. The author also addresses the issue of the right to accommodation that arose in case *Kušionová*, where the Court of Justice of the EU underlined the right to accommodation as a fundamental right guaranteed by Article 7 of the Charter, which the referring court must consider when applying Directive 93/13/EEC on unfair contract terms. This is followed by a discussion of asylum cases.

Keywords: Charter of Fundamental Rights of the European Union; primary law; Court of Justice of the European Union; right to privacy; data protection; Google; Facebook; right to accommodation; asylum.

Europeanization of the constitutional courts case law through the Charter of Fundamental Rights of the European Union

Katarina Vatovec

ABSTRACT

With the entry into force of the Lisbon Treaty, the EU Charter of Fundamental Rights has become a binding source of fundamental rights in the European Union. As such, it has become a tool of integrating and accelerating these rights as well as a tool of Europeanization that by its contemporary catalogue of civil, political, social, and economic rights shapes and develops the European human rights regime. The article firstly touches upon the question of when the EU Charter of Fundamental Rights is applicable in the case law of constitutional courts. Then it focuses on the use of the EU Charter of Fundamental Rights in the case law of the Slovenian Constitutional Court. By analysing the selected constitutional court decisions, the article explains how the existence of the EU Charter has influenced the Europeanization of the Slovenian Constitutional Court.

Keywords: Charter of Fundamental Rights of the European Union; constitutional courts; European Court of Justice; case law; principle of the highest protection of rights.

The Charter of Fundamental Rights of the European Union, solidarity, and the eurozone crisis

Igor Senčar

ABSTRACT

With the Treaty of Lisbon, solidarity in the European Union is articulated as a value, principle, aim, and feature of European society. At the same time, solidarity is also articulated in the Charter of Fundamental Rights of the European Union in terms of social rights and principles. This article deals with the confrontation of both so-called articulated solidarity and solidarity expectations in the context of the challenge of the eurozone crisis. This confrontation was structured in terms of two orders. The order of the constitutionalization of the European Union's values, principles, rights and objectives – among which solidarity is particularly emphasized – was pitted against the specific order of the European Union's economic and monetary union, which involved ensuring the stability and soundness of the single currency as a key objective. The basic logic of the anti-crisis measures and their key objective – the stability of the euro area as a whole – are analyzed in terms of solidarity. It turns out that, given the aims and principles of economic policies and the specific order of economic and monetary union, the social aspects of the European Union are in a disadvantageous position despite the full legal force of the Charter of Fundamental Rights of the European Union accorded by the Lisbon Treaty, which includes solidarity among its important social rights and principles. The article addresses select causes of the weak validity of solidarity and solidarity rights and expectations in the face of the European Union's actions concerning the eurozone crisis.

Keywords: solidarity; solidarity expectations; anti-crisis measures; loyal co-operation; social rights and principles; moral hazard; conditional solidarity; fiscal consolidation; normative solidarity; stability-oriented economic policies.

The horizontal nature and functioning of the Charter of Fundamental Rights of the European Union in private relationships

Jernej Letnar Čerňič

ABSTRACT

The European System for the Protection of Human Rights is primarily based on the European Convention for the Protection of Human Rights and Fundamental Freedoms, which obliges all States Parties to the Council of Europe to implement it in their domestic legal systems. It is complemented by the protection of human rights and fundamental freedoms within the European Union, led by the Charter of Fundamental Rights of the European Union. States have negative and positive obligations to respect, protect and fulfil human rights and fundamental freedoms of individuals and groups. They must abstain from any interference with human rights and fundamental freedoms, as well as strive to respect human rights in private relationships through adopting active measures. This article addresses the horizontal nature and effect of the Charter of the European Union on private individuals. Does the Charter of the European Union only bind member states and institutions of the European Union or may it also have an effect on private relations? Can it be invoked by individuals for alleged human rights abuses in private relationships? How can we reform the use and interpretation of the Charter and the broader protection of human rights in the European Union so that they could be applied and protected both vertically and horizontally?

Keywords: EU Charter, human rights, horizontal effect, horizontal nature, obligations of private actors.

Horizontal effect of some human rights of the Charter of Fundamental Rights of the European Union through the perspective of the case law of the Court of Justice of the European Union

Suzana Pecin

ABSTRACT

Initially the law of the European Union did not contain the provisions providing the protection of human rights, however this fact did not discourage the European Court of Justice to present them as fundamental principles of the law of the European Communities. The landmark case being *Stauder*. Later in case *Schmidberger* while assessing the economic freedom and human right, it decided that the latter should prevail. Mentioned case law leads to the enactment of the Lisbon treaty that establishes the binding nature of the Charter of Fundamental Rights of the European Union, forming part of primary law of the European Union. Recent case law of the European Court of Justice goes even further and assures to the individuals that they can exercise their rights in disputes with other private entities. This obligation is also imposed on the national courts. Approximation of the legal order of the European Union to the individuals through the horizontal effect of human rights as guaranteed by the Charter of Fundamental Rights, shall ensure its effectiveness and abolish the last gaps in the federal nature of the European Union that already today corresponds to the atypical form of a federal state.

Keywords: human rights law in the European Union; fundamental rights; case law of the Court of Justice of the European Union; doctrine *drittwirkung* of the Charter of Fundamental Rights of the European Union.

Horizontal application of the Charter of Fundamental Rights of the European Union

Petra Weingerl

ABSTRACT

In the last decade, since the EU Charter has been legally binding, the Court of Justice of the EU has increasingly invoked fundamental rights in its case law. However, with regard to the issue of the application of the EU Charter, certain questions remain to be resolved by the Court of Justice of the EU with its interpretation. The paper addresses the issue of the horizontal application of the EU Charter, that is, the question of the application of the EU Charter *ratione personae*. In a recent Bauer judgment, the Court of Justice of the EU clarified this issue to a certain extent. It confirmed that the provisions of the EU Charter can, in principle, have a direct horizontal effect, i.e. they can be relied upon in disputes between individuals if the conditions are fulfilled. However, certain issues regarding the horizontal application of fundamental rights are still to be resolved, such as the importance of direct effect for the horizontality and the question of horizontal application of the EU Charter in cases that go beyond the incorrect implementation of the provisions of the EU directives.

Keywords: EU Charter of Fundamental Rights, private law relationships, primary law, direct effect, individuals, freedom of contract, weaker party protection.

The Charter of Fundamental Rights and the European Convention on Human Rights: two cornerstones of European integration intertwined

Marko Bošnjak

ABSTRACT

The author initially presents diversities of Europe and possible means to assure cohabitation of its parts. In order to achieve its realisation, he identifies domination and cooperation as the main options. As it is ethically unacceptable and technically unsustainable, he rejects domination as a possibility. In turn, cooperation can be based on common interests or common values and beliefs. The author underlines the need for an interest or an idea stable enough to overcome all diversities and transitions. Next, it is described how human rights and fundamental freedoms served as the first element of the European unification after the WWII, leading to an adoption of the European Convention on Human Rights and the formation of the European Court of Human Rights (the Court). The second limb of the European unification in the framework of the European Union (EU) was initially obstructed due to doubts whether the EU assured an appropriate level of protection of human rights. Subsequently, on the basis of the adoption of the EU Charter of Fundamental Rights (CFR), the trust was strengthened to the extent that there exists an assumption of respect for human rights in implementation of the EU law, including in cases of cooperation between member States on the basis of the EU law. Additionally, the author shows how the CFR has served as a source of inspiration for the Court. On this basis, the Court has gone beyond traditional interpretation of certain Convention provisions. In the final part, the author discusses certain pitfalls in pursuit for a common European idea as well as importance of European unity. He concludes by claiming that the best way to overcome diversities is to further the concept of inherent human dignity, this being in turn the fundamental source of human rights. These can be best implemented through mechanisms of the rule of law, including through a possibility of an individual application in cases of their

violations. This particular point is apparently missing in the system of the CFR, this thereby being one of the future challenges of the EU.

Keywords: Charter of Fundamental Rights; European Convention on Human Rights; European integration; Court of Justice of the European Union; European Court of Human Rights.

The future of human rights protection in the European Union

Matej Avbelj

ABSTRACT

Commemorating the tenth anniversary of the EU Charter of Fundamental Rights, this article examines the question of the future of human rights protection in the European Union. The answer is pursued in two steps. The history of human rights protection is analysed first and this analysis is then subjected to the normative evaluation in light of the prevailing theories of the legal and political nature of the integration. The article, arguing in favor of the theory of union, advocates a balanced approach, which is respectful of the pluralist relationship inside the EU constitutional framework and which shall shift its present focus from the formal protection of human rights to their meaningful safeguarding in practice.

Keywords: EU Charter of Fundamental Rights; Theory of Union; constitutional pluralism; EU accession to ECHR; EU Future.