

European Union Law

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The sources of EU law: (ii) the fundamental rights

Lesson No 10

The 'unwritten' Bill of Rights

HISTORICAL BACKGROUND: FUNDAMENTAL RIGHTS AS GENERAL PRINCIPLES OF EU LAW

Historical background

In the aftermath of the WW2, as a reaction to the atrocities committed during the war, codification and protection of fundamental rights became of paramount importance both

- At national → the post-war Constitutions of European States, and
- International level → 1950 ECHR
 - A **catalogue of** civil and political **fundamental rights**
 - A **supranational supervisory mechanism** (ECommHR + ECtHR), that would ensure the rights would be effectively complied with

The problem with the European Union

The EU, and the Communities before, had been given **regulatory powers** which could affect individuals → EU rules could, directly or indirectly, **impose obligations on individuals**

→ a conflict could arise between

- a) EU rules and/or national rules within the scope of EU law and
- b) Fundamental rights of private parties

The following issues then arise

- 1) Are EU institutions bound by fundamental rights?
- 2) If so, which standards of protection apply?
- 3) Who has jurisdiction on assessing the compatibility of EU acts with those standards?

Filling the fundamental rights gap in the Communities

The Communities had been given regulatory powers which could directly affect individuals → but fundamental rights were largely absent from the founding Communities treaties

The problem: if those powers were not curtailed by fundamental rights, the rights constitutionally granted on individuals might be circumvented (by the MSs) →

- a) either domestic standards of protection apply and national Constitutional courts have jurisdiction → primacy and uniformity of application of EC law would be undermined
- b) or the Communities develop their own standard of protection, with the ECH having the power to arbitrate

The development of the case law of the CJEU

Starting with case 29/69, *Stauder*

- Fundamental rights as unwritten general principles of EC law applicable to the EC acts
 - which rights? CJEU would “draw inspiration” from constitutional traditions common to the MSs and from international treaties on this field to which MSs are signatory
- The CJEU would protect such rights
 - a) If more than one interpretation of a EC norm is possible, that which does not infringe fundamental rights would have to be adopted
 - b) EC acts adopted in breach of fundamental rights would be declared void

The scope of application of fundamental rights as general principles

- a) Fundamental rights as limit to the acts of the Union institutions → validity requirement
- b) Fundamental rights as limit upon the acts of Member States
 - When they are implementing EU law or
 - When they act within the scope of EU law

The 'written' Bill of Rights

THE CHARTER OF FUNDAMENTAL RIGHTS

The 'external' Bill of Rights

THE EU AND THE ECHR