

Editorial

The Charter of Fundamental Rights of the European Union: The First Ten Years-New Challenges and Perspectives

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1. Introduction

Since 1 December 2009, the time when the Treaty of Lisbon came into force, the Charter of Fundamental Rights of the European Union (hereinafter: the EU Charter, the Charter) has been formally included in the EU legal order as primary EU law. In particular, article 6, para. 1 TEU reads:

“1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.”

The aforementioned provisions set the constitutional framework for the recognition and application of the Charter as a legally binding catalogue of fundamental rights. However, the history of the Charter goes back to 2000 when it was first proclaimed at the political level by the EU institutions, at Nice, on December 7, without any formal legal recognition. The incorporation of the Charter in the Treaty establishing a Constitution for Europe in 2004 proved to be unsuccessful since the French and Dutch electorate, in the respective referenda, rejected the Treaty (Margaritis 2016).

As a result, in 2019, the EU Charter of Fundamental Rights celebrated 10 years from its formal recognition as primary EU law. The aim of this Special Issue is to stimulate discussion on the past, present, and future of the Charter of Fundamental Rights of the European Union from a variety of perspectives. In particular, topics of interest included:

- The proclamation and formal recognition of the Charter: historical aspects;
- The substantive law of the Charter: Theoretical and doctrinal approaches on the rights;
- The scope of the Charter;
- The formulation of the rights of the Charter through the CJEU case law;
- Judicial dialogue between the CJEU and the ECtHR;
- The principle of proportionality and limitation of the rights of the Charter;
- The role of the Charter in the composite constitutionalism in Europe;
- The future of the Charter;
- Interdisciplinary approaches to human rights in Europe.



Citation: Tzemos, Vasileios G., and Konstantinos Margaritis. 2021. The Charter of Fundamental Rights of the European Union: The First Ten Years-New Challenges and Perspectives. *Laws* 10: 76. <https://doi.org/10.3390/laws10040076>

Received: 27 September 2021
Accepted: 28 September 2021
Published: 30 September 2021

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2. The Content of the Charter

The rights included in the Charter have been categorised into six different thematic titles, each reflecting a core value of the European Union; these are Dignity (art. 1–5), Freedoms (art. 6–19), Equality (art. 20–26), Solidarity (art. 27–38), Citizens' rights (art. 39–46) and Justice (art. 47–50). Apart from the substantive part, the final title VI contains general provisions governing the interpretation and the application of the Charter (Tzemos 2019; Kellerbauer et al. 2019; Peers et al. 2021).

It is worth briefly mentioning article 52 on the scope and interpretation of rights and principles. According to that provision:

1. Any limitation on the exercise of the rights and freedoms recognised 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 recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law from providing more extensive protection.
4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

From the grammatical interpretation of the provision, the reference to all main fundamental rights protection elements in Europe, at the national, EU and ECHR levels can be observed. Indeed, paragraph 2 refers to the rights included in the Treaties, paragraph 3 underlines the relations with the rights of the ECHR, paragraph 4 includes the concept of constitutional traditions common to the member states and paragraph 6 refers to national laws and practices. In that sense, the Charter becomes the center of fundamental rights protection in EU, which substantially and creatively interacts with all other fundamental rights protection elements in Europe to form a composite European legal order (Besselink 2007).

3. The Content of the Special Issue

The Special Issue is composed of seven very intriguing articles written by leading scholars from different scientific backgrounds. The articles are the following:

- Avtonomov, A. Activities of the European Ombudsman under the Charter of Fundamental Rights: Promoting Good Administration through Human Rights Compliance. *Laws* 2021, 10, 51. <https://doi.org/10.3390/laws10030051>.
- Pillay, N. The Promise of the EU Charter of Fundamental Rights (and Brexit) on the Implementation of Economic and Social Rights among EU Member States. *Laws* 2021, 10, 31. <https://doi.org/10.3390/laws10020031>.

- Kyriakopoulos, G.L. Environmental Legislation in European and International Contexts: Legal Practices and Social Planning toward the Circular Economy. *Laws* 2021, 10, 3. <https://doi.org/10.3390/laws10010003>.
- Eksteen, R. Diplomatic and Consular Protection with Special Reference to Article 46 of the EU Charter of Fundamental Rights. *Laws* 2020, 9, 32. <https://doi.org/10.3390/laws9040032>.
- Campbell, J.R. Interrogating the Role and Value of Cultural Expertise in Law. *Laws* 2020, 9, 29. <https://doi.org/10.3390/laws9040029>.
- Glover-Thomas, N. A ‘Wellbeing’ Paradigm: A Concept-Based Study of Body Art and Regulatory Challenges. *Laws* 2020, 9, 22. <https://doi.org/10.3390/laws9040022>.
- Baros, M. The UK Government’s Covid-19 Response and Article 2 of the ECHR (Title I Dignity; Right to Life, Charter of Fundamental Rights of the EU). *Laws* 2020, 9, 19. <https://doi.org/10.3390/laws9030019>.

The articles reflect an interdisciplinary approach to fundamental rights from a doctrinal and practical perspective. This Special Issue is oriented towards the academic community and practitioners with a broad interest in human rights from a variety of disciplines. Scholars interested in institutional and substantive human rights law and general legal audience having an interest in human rights, academics, researchers and students will find this Special Issue useful in furthering their research exposure to pertinent topics in human rights and assisting in furthering their own research efforts in this field.

At this point, we would like to warmly thank all authors for submitting their valuable contributions to our Special Issue, the Editorial Office of the Journal *Laws* for believing in our proposal, especially the Managing Editor of the Journal Ms. Farrah Sun, for her continuous support throughout the whole process of publication.

Author Contributions: Conceptualization, V.G.T. and K.M.; methodology, V.G.T. and K.M.; software, V.G.T. and K.M.; validation, V.G.T. and K.M.; formal analysis, V.G.T. and K.M.; investigation, V.G.T. and K.M.; resources, V.G.T. and K.M.; data curation, V.G.T. and K.M.; writing—original draft preparation, V.G.T. and K.M.; writing—review and editing, V.G.T. and K.M.; visualization, V.G.T. and K.M.; supervision, V.G.T. and K.M.; project administration, V.G.T. and K.M.; funding acquisition, V.G.T. and K.M. All authors have read and agreed to the published version of the manuscript.

Funding: This research received no external funding.

Institutional Review Board Statement: Not applicable.

Informed Consent Statement: Not applicable.

Data Availability Statement: Not applicable.

Conflicts of Interest: The authors declare no conflict of interest.

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- Peers, Steve, Tamara Hervey, Jeff Kenner, and Angela Ward, eds. 2021. *The EU Charter of Fundamental Rights: A Commentary*. Oxford: Hart Publishing.
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