

Link between the human rights catalogue in the Convention and in the Charter

Before getting into a detailed comparison, an evitable need arises to take a succinct look into the history of both the Charter and the Convention.

The *Charter of Fundamental Rights of the European Union*¹ is the first document that provides a written catalogue of provisions in order to protect human rights within the European Union, which ensures the legal certainty and also the synoptical visibility of human rights.

There was an attempt, as an antecedent to the Charter, to provide a common constitution for Europe (European Constitution) with the intention to replace all the EU treaties in one text. This was signed in Rome on 29 October 2004 by 25 Member States of the European Union, and it would have given legal force to the Charter. After several debates, due to the Dutch and French voters, it was finally rejected in 2005 and the process of ratification discontinued. The Charter itself originally formed part of the European Convention. Subsequently, on 13 December 2007, the Treaty of Lisbon² was signed in Portugal, which was created to replace the abovementioned defunct European Constitution. It contained a large number of changes that were basically part of the common constitution and amended the two basic treaties of the European Union.

As is well-known, the two major treaties of the EU are:

- the Treaty establishing the European Economic Community³ (TEEC) or the Treaty of Rome from 1958, which was renamed at Lisbon to the Treaty on the Functioning of the European Union (TFEU); and
- the Treaty on European Union⁴ (TEU) or Maastricht Treaty from 1993, which created the European Union and was amended by the treaties of Amsterdam, Nice and, finally, Lisbon. This did not include any reference to fundamental or human rights at all.

Now, the Treaty of Lisbon amended these two basic treaties on a number of fields, e.g. the voting system; it gave member states explicitly the right to leave the EU; made the Charter of Fundamental Rights legally binding. The most important amendment, though, was the giving a consolidated legal personality for the European Union. This is one of the utmost important point which will determine and give the base for the EU as a legal person to become a member of the Convention.

Just to be fully comprehensive, we shall refer to Article 6 of the Treaty on European Union as well, which stipulates that

¹ http://www.europarl.europa.eu/charter/pdf/text_en.pdf

² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:306:FULL&from=EN>

³ non consolidated version of TEEC:

http://www.cvce.eu/obj/treaty_establishing_the_european_economic_community_rome_25_march_1957-en-cca6ba28-0bf3-4ce6-8a76-6b0b3252696e.html

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012M/TXT&from=EN>

„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.

2. 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.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.”

The aim of the Treaty of Lisbon is *„to complete the process started by the Treaty of Amsterdam and by the Treaty of Nice with a view to enhancing the efficiency and democratic legitimacy of the Union and to improving the coherence of its action”⁵.*

As seen, the Charter brought together in one single document the fundamental rights protected in the EU. It was initially proclaimed at the Nice European Council in 2000 - without binding legal effect. As of the entry into force of the Treaty of Lisbon on 1 December 2009, the Charter became legally binding on the EU institutions and on national governments.

However, the text itself does not intend to establish new rights, but it assembles existing rights:

- a range of civil, political, economic and social rights (Court of Justice of the EU (CJEU) case-law rights; Convention rights and freedoms; and rights and principles of the common constitutional traditions of EU Member States); and
- 'third generation' of fundamental rights (such as data protection; clean environment; guarantees on bioethics; good administration).

The Charter is based on the European Convention on Human Rights⁶, the European Social Charter⁷, the case-law of the European Court of Justice; and pre-existing provisions of EU law.

On the other hand, the *European Convention on Human Rights* (formally the Convention for the Protection of Human Rights and Fundamental Freedoms) was created as an international treaty to protect human rights and fundamental freedoms throughout Europe.

⁵ Preamble of the Treaty of Lisbon

⁶ http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁷ <http://www.refworld.org/pdfid/3ae6b3678.pdf>

It was drafted by the Council of Europe in 1950 and entered into force on 3 September 1953. All Council of Europe (also referred as CoE) Member States are party to the Convention (47 to date), and new CoE members are expected to ratify the Convention at their earliest opportunity.

The Convention established the European Court of Human Rights (referred as ECtHR). Without going into details, it is noteworthy that in 1998, the Court became a full-time institution and the European Commission of Human Rights, which used to decide on admissibility of applications, was abolished by Protocol 11 to the Convention⁸. Any person who feels his or her rights have been violated under the Convention by a CoE member state can bring his or her case before the Court. The Convention is the only *international* human rights document which provides individual protection of such a high level.

As to its structure, the Convention consists of 3 parts. The main rights and freedoms are contained in Section I, which consists of Articles 2 to 18. Section II (Articles 19 to 51) sets up the Court and its rules of operation. Section III contains various concluding provisions.

As of January 2010, fifteen protocols to the Convention have been opened for signature. These can be divided into two main groups: those amending the framework of the convention system, and those expanding the rights that can be protected.

The Charter contains 54 articles divided into 7 titles: the first six titles deal with substantive rights under the headings of: dignity, freedoms, equality, solidarity, justice, citizens' rights, and the general provisions governing the interpretation and application of the charter. The last title deals with the interpretation and application of the Charter.

Before examining the concrete provisions of both documents, it is utterly important to take a short look into the rules relating the interpretation and application of the Charter first in order to understand the link between the Charter and the Convention. By way of introduction it is to be noted that there is some uncertainty about the relationship between the Charter and the Convention.

The essence of the interlink between the documents is to be found amongst the general provisions of the Charter governing the interpretation and application thereof. The last Title (from Article 51 to 54) is the one that deals with the interpretation and application of the Charter, namely the Field of application (51); Scope and interpretation of rights and principles (52); Level of protection (53); and, finally, the Prohibition of abuse of rights (54).

Article 51⁹ of the Charter sets forth the field of application. It aims to determine the scope of the Charter, by which it applies primarily to the institutions and bodies of the Union, of course, in compliance with the principle of subsidiarity. The requirement of respecting fundamental rights defined in an Union context is only binding on a Member State when it acts in the scope of Union law. The fundamental rights as guaranteed in the

⁸ <http://conventions.coe.int/Treaty/en/Treaties/html/155.htm>

⁹ Article 51 - Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Union do not have any effect other than in the context of the powers determined by the Treaties. The Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established by the treaties.

Article 52¹⁰ concerns the scope and interpretation of rights and principles to lay down rules for their interpretation and deals with the arrangements for the limitation of rights. Paragraph two refers to rights which were already guaranteed in treaties and have been recognised in the Charter. The most important issue relating to the Convention can be found in paragraph three which is intended to ensure the consistency between the Charter and the Convention by establishing:

„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 providing more extensive protection.“

It means that if the rights in the Charter also correspond to rights guaranteed by the Convention, the meaning and scope of those rights are the same as those laid down by the Convention. It is to be noted that this provision also involves the authorised limitations, which means that the legislator have to comply with the same standards as are fixed by the limitation arrangements under the Convention, without adversely affecting the autonomy of Union law and the CJEU. It is noteworthy that a reference to the Convention also involves its Protocols. It is not only the text itself which determines the meaning and the scope of a particular fundamental or human right, but the case-law of both the ECtHR and the ECJ. However, the last sentence of Article 52 Paragraph 3 allows the Union to guarantee more extensive protection, which means that the level of protection by the Charter may never be lower than that guaranteed by the Convention.

Article 15 of the Convention stipulates that:

„1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

¹⁰ Article 52 - Scope of guaranteed rights

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 which are based on the Community Treaties or the Treaty on European Union 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 providing more extensive protection.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

The Charter does not affect this particular provision of the Convention, i.e. Member States have the possibility to avail themselves derogations from Convention rights in the event of war or of other public dangers threatening the life of the nation.

The list of rights which may be regarded as corresponding to rights in the Convention within the meaning of Article 52 Paragraph 3 of the Charter does not include rights additional to those in the Convention.

Articles containing rights envisaged in the Convention corresponding to the ones of the Charter can be divided into two groups:

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the Convention.
2. Articles where the meaning is the same as the corresponding provisions of the Convention, but the scope is wider.

These two fields will be covered hereinafter, but first, let's proceed further to Article 53¹¹ of the Charter, which contains the level of protection, which is indeed intended to maintain the level of protection afforded within their respective scope by Union law, international law and national law. Being aware of its importance, the Convention is expressly mentioned.

Article 54¹² refers to the prohibition of abuse of rights. This particular Article corresponds to the Convention, namely to Article 17 thereof, which reads as follows:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

With all this end in view, we shall go back to the concrete Articles of the two basic human rights documents.

¹¹ Article 53 - Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

¹² Article 54 - Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

The European Convention on Human Rights contains the following provisions concerning human rights with reference to the particular Articles (other provisions relating to procedural aspects excluded):

Article 1 – Obligation to respect human rights

Article 2 – Right to life

Article 3 – Prohibition of torture

Article 4 – Prohibition of slavery and forced labour

Article 5 – Right to liberty and security

Article 6 – Right to a fair trial

Article 7 – No punishment without law

Article 8 – Right to respect for private and family life

Article 9 – Freedom of thought, conscience and religion

Article 10 – Freedom of expression

Article 11 – Freedom of assembly and association

Article 12 – Right to marry

Article 13 – Right to an effective remedy

Article 14 – Prohibition of discrimination

Article 15 – Derogation in time of emergency

Article 16 – Restrictions on political activity of aliens

Article 17 – Prohibition of abuse of rights

Protocols

No. 1: Article 1 – Protection of property

Article 2 – Right to education

Article 3 – Right to free elections

No. 4: Article 1 – Prohibition of imprisonment for debt

Article 2 – Freedom of movement

Article 3 – Prohibition of expulsion of nationals

Article 4 – Prohibition of collective expulsion of aliens

No. 6: Article 1 – Abolition of the death penalty

Article 2 – Death penalty in time of war

Article 2 – Right of appeal in criminal matters

Article 3 – Compensation for wrongful conviction

No. 7: Article 4 – Right not to be tried or punished twice

Article 5 – Equality between spouses

No. 12: Article 1 – General prohibition of discrimination

No. 13: Article 1 – Abolition of the death penalty

Meanwhile, the Articles envisaged in the Charter of Fundamental Rights of the European Union are the following under the heading of

- Dignity:

Article 1 - Human dignity

Article 2 - Right to life

Article 3 - Right to the integrity of the person

Article 4 - Prohibition of torture and inhuman or degrading treatment or punishment

Article 5 - Prohibition of slavery and forced labour

- Freedoms:

Article 6 - Right to liberty and security

Article 7 - Respect for private and family life

Article 8 - Protection of personal data

Article 9 - Right to marry and right to found a family

Article 10 - Freedom of thought, conscience and religion

Article 11 - Freedom of expression and information

Article 12 - Freedom of assembly and of association

Article 13 - Freedom of the arts and sciences

Article 14 - Right to education

Article 15 - Freedom to choose an occupation and right to engage in work

- Article 16 - Freedom to conduct a business
- Article 17 - Right to property
- Article 18 - Right to asylum
- Article 19 - Protection in the event of removal, expulsion or extradition
- Equality:
 - Article 20 - Equality before the law
 - Article 21 - Non-discrimination
 - Article 22 - Cultural, religious and linguistic diversity
 - Article 23 - Equality between women and men
 - Article 24 - The rights of the child
 - Article 25 - The rights of the elderly
 - Article 26 - Integration of persons with disabilities
- Solidarity:
 - Article 27 - Workers' right to information and consultation within the undertaking
 - Article 28 - Right of collective bargaining and action
 - Article 29 - Right of access to placement services
 - Article 30 - Protection in the event of unjustified dismissal
 - Article 31 - Fair and just working conditions
 - Article 32 - Prohibition of child labour and protection of young people at work
 - Article 33 - Family and professional life
 - Article 34 - Social security and social assistance
 - Article 35 - Health care
 - Article 36 - Access to services of general economic interest
 - Article 37 - Environmental protection
 - Article 38 - Consumer protection
- Citizens' Rights:
 - Article 39 - Right to vote and to stand as a candidate at elections to the European Parliament
 - Article 40 - Right to vote and to stand as a candidate at municipal elections
 - Article 41 - Right to good administration
 - Article 42 - Right of access to documents
 - Article 43 - European Ombudsman
 - Article 44 - Right to petition
 - Article 45 - Freedom of movement and of residence
 - Article 46 - Diplomatic and consular protection
- Justice:
 - Article 47 - Right to an effective remedy and to a fair trial
 - Article 48 - Presumption of innocence and right of defence
 - Article 49 - Principles of legality and proportionality of criminal offences and penalties
 - Article 50 - Right not to be tried or punished twice in criminal proceedings for the same criminal offence

While comparing the protected rights envisaged in the Charter and the Convention, in the first set of provisions there are Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the Convention.

CHARTER	CONVENTION
<p>Article 2 - Right to life</p> <p>1. Everyone has the right to life.</p> <p>2. No one shall be condemned to the death penalty, or executed.</p>	<p>Article 2 - Right to life</p> <p>1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided</p>

	<p>by law.</p> <p>2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:</p> <p>(a) in defence of any person from unlawful violence;</p> <p>(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;</p> <p>(c) in action lawfully taken for the purpose of quelling a riot or insurrection.</p>
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As we can see, paragraph 1 of the Charter is based on the first sentence of *Article 2 paragraph 1 of the Convention*. The second sentence refers to the death penalty, which was superseded by virtue of *Article 1 Protocol 6 to the Convention*. Article 2 paragraph 2 of the Charter is based on that provision.

In accordance with Article 53 paragraph 3 of the Charter, Article 2 has the same meaning and scope, negative definitions appearing in the Convention included.

CHARTER	CONVENTION
<p><i>Article 4 - Prohibition of torture and inhuman or degrading treatment or punishment</i></p> <p><i>No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</i></p>	<p><i>Article 3 - Prohibition of torture</i></p> <p><i>No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</i></p>

Article 4 of the Charter guarantees the same right as Article 3 of the Convention does. It prohibits corporal punishment, interrogation techniques that violate physical integrity, as well as 'stress and duress' techniques (e.g. wall standing, deprivation of sleep or food and drink, as well as forcing prisoners to parade naked). It also covers three separate categories of prohibited treatment:

- (1) torture;
- (2) inhuman treatment/punishment; and
- (3) degrading treatment/punishment.

There's no proper accepted definition of what constitutes 'torture', it is only defined or rather circumscribed in broad terms like 'deliberate inhuman treatment causing very serious and cruel suffering' (whether physical or mental). Ill-treatment 'must attain a minimum level of severity'. The threshold level depends on all the circumstances of the case (duration; physical or mental effects; and in some cases, the sex, age and state of health of the victim, etc. Concerning the distinction between these is typically the *intensity* of treatment.

CHARTER	CONVENTION
<p>Article 5 - Prohibition of slavery and forced labour</p> <p>1. No one shall be held in slavery or servitude.</p> <p>2. No one shall be required to perform forced or compulsory labour.</p>	<p>Article 4 - Prohibition of slavery and forced labour</p> <p>1. No one shall be held in slavery or servitude.</p> <p>2. No one shall be required to perform forced or compulsory labour.</p>

The right in Article 5 paragraphs 1 and 2 corresponds to Article 4 paragraphs 1 and 2 of the Convention, with the same wording.

As to paragraph 1, no limitation may be justified, i.e. this prohibition is absolute.

In paragraph 2 'forced or compulsory labour' must be understood in the light of the negative definitions contained in Article 4 paragraph 3 of the Convention, which contains exclusions:

- a) work required to be done in course of detention or during conditional release from such detention
- b) service of a military character;
- c) service exacted in case of a life-threatening emergency or calamity;
- d) work or service forming part of normal civic obligations.

CHARTER	CONVENTION
<p>Article 6 - Right to liberty and security</p> <p>Everyone has the right to liberty and security of person.</p>	<p>Article 5 - Right to liberty and security</p> <p>1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:</p> <p>(a) the lawful detention of a person after conviction by a competent court;</p> <p>(b) the lawful arrest or detention of a person</p>

for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;^{8 9}

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 6 of the Charter contains the rights guaranteed by Article 5 of the Convention, with the same wording, meaning and scope. The limitations which may legitimately apply cannot not exceed those permitted by the Convention.

The *right to liberty* is most often concerned with arrest and unlawful detention by the State. Right to liberty is not an absolute right, it ensures that a person can only be detained pursuant to law. The '*security of person*' refers to the prohibition against arbitrary detention by the State.

Arrest is the most common kind of interference with liberty. Not everyone who is arrested is subject to detention (e.g. they are taken to the police station and then released without charge), but if an arrest is unlawful, any detention that follows it will be unlawful also. The other form of deprivation of liberty is the *detention*, which is most often associated with imprisonment. As to 'unlawfulness', the length of time is not itself determinative. The grounds upon which may lawfully deprive an individual of liberty are those exhaustively envisaged in Article 5 of the Convention.

CHARTER	CONVENTION
<p>Article 7 - Respect for private and family life</p> <p><i>Everyone has the right to respect for his or her private and family life, home and communications.</i></p>	<p>Article 8 - Right to respect for private and family life</p> <p><i>1. Everyone has the right to respect for his private and family life, his home and his correspondence.</i></p> <p><i>2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</i></p>

Article 7 of the Charter corresponds to Article 8 of the Convention. The word 'correspondence' has been replaced by 'communications' as of from 1 June 2010, and that is only difference. 'Communications' include letters, telephone calls, faxes and e-mails as well. The ECtHR has not given an exhaustive definition of '*private life*'. As to '*family life*', blood relationship is a starting point for describing 'family life', but the financial and emotional ties may suffice to establish family life. The right to respect for a person's private or family life may be subject to interference by the State on the grounds of an exhaustive listing of Article 8 of the Convention: national security; public safety; economic well-being of the country; prevention of disorder or crime; protection of health or morals; and protection of the rights and freedoms of others.

CHARTER	CONVENTION
<p>Article 10 (1) - Freedom of thought, conscience and religion</p> <p>1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.</p>	<p>Article 9 - Freedom of thought, conscience and religion</p> <p>1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.</p> <p>2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.</p>

This particular right might be one of the oldest recognised right. The right *not* to hold religious beliefs or engage in religious practices is equally protected. Limitations in respect of this right must respect under Article 9 paragraph 2 of the Convention.

CHARTER	CONVENTION
<p>Article 11 - Freedom of expression and information</p> <p>1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.</p> <p>2. The freedom and pluralism of the media shall be respected.</p>	<p>Article 10 - Freedom of expression</p> <p>1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. <i>(This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.)</i></p> <p>2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the</p>

	disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
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Article 11 of the Charter corresponds to Article 10 of the Convention. The limitations may not exceed those provided for in Article 10 paragraph 2 of the Convention, without prejudice to any restrictions which competition law of the Union may impose on Member States' right to introduce the licensing arrangements (broadcasting, television or cinema).

CHARTER	CONVENTION
<p>Article 17 - Right to property</p> <p>1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.</p> <p>2. Intellectual property shall be protected.</p>	<p>Article 1 of the Protocol No.1 - Protection of property</p> <p>Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.</p> <p>The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.</p>

Article 17 of the Charter is based on Article 1 of the Protocol to the Convention. This is common to all national constitutions. The wording has been updated but the meaning and scope of the right are the same as those of the right guaranteed by Article 1 of Protocol No. 1 to the Convention and the limitations may not exceed those mentioned there.

CHARTER	CONVENTION
<p>Article 19 (1) - Protection in the event of removal, expulsion or extradition</p> <p>1. Collective expulsions are prohibited.</p> <p>Article 19 (2)</p> <p>2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.</p>	<p>Article 4 of Protocol No. 4 - Prohibition of collective expulsion of aliens</p> <p>Collective expulsion of aliens is prohibited.</p> <p>Article 3 of Protocol No. 4 - Prohibition of expulsion of nationals</p> <p>1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.</p> <p>2. No one shall be deprived of the right to enter the territory of the State of which he is a national.</p>

Article 19 paragraph 1 of the Charter has the same meaning and scope as Article 4 of Protocol No. 4 to the Convention relating collective expulsion. This right derives from the Member States' right to control the entry, residence and expulsion of non-nationals. Its purpose is to guarantee that no single measure can be taken to expel all persons having the nationality of a particular. This particular prohibition in international law is based on two principles, namely the prohibition of discrimination and the prohibition of arbitrariness.

Article 19 paragraph 2 of the Charter refers to and thus incorporates the case-law of the European Court of Human Rights regarding Article 3 of the Convention.

CHARTER	CONVENTION
<p>Article 48 - Presumption of innocence and right of defence</p> <p>1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.</p> <p>2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.</p>	<p>Article 6 (2) and (3) - Right to a fair trial</p> <p>2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.</p> <p>3. Everyone charged with a criminal offence has the following minimum rights:</p> <p>(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;</p> <p>(b) to have adequate time and facilities for the preparation of his defence;</p> <p>(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;</p> <p>(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;</p> <p>(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.</p>

The presumption of innocence and right of defence guaranteed by Article 48 of the Charter are of the most important fundamental rights of criminal law in both common and continental law systems. This is the same as Article 6 paragraphs 2 and 3 of the Convention, with the same meaning and scope - in accordance with Article 52 paragraph 3 of the Charter. The presumption of innocence means that a person charged with a criminal offence shall be presumed innocent until proved guilty according to law. The onus of proof in this respect is on the prosecution to prove that the accused has committed the crime. If it fails to prove it, the accused shall be acquitted. It is for the prosecution to inform the accused of the case that will be made against him, so that he may prepare and present his defence.

'Criminal charge' has an autonomous meaning. This particular right does not apply to practices in the course of a criminal investigation such as blood or breathalyser tests, medical examinations, fingerprinting, searches, or identity parades. Another general basic legal principle and right in criminal proceedings is the right to a defence. In this respect common minimum standards have been set out, like access to legal advice, access to free interpretation and translation, or notifying suspected persons of their rights.

CHARTER	CONVENTION
<p>Article 49 paragraphs 1 (last sentence excluded) and 2 - Principles of legality and proportionality of criminal offences and penalties</p> <p>1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.</p> <p>2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.</p>	<p>Article 7 - No punishment without law</p> <p>1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.</p> <p>2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.</p>

Paragraph 1 of Article 49 of the Charter refers to 'criminal offence', i.e. only applies when somebody is found guilty (convicted of a criminal offence). This article applies only to criminal prosecutions. Regarding 'penalty' in this respect has an autonomous meaning, which should mean a measure imposed following conviction for a criminal offence. In Paragraph 2, the reference to 'civilised' nations has been deleted but this does not change the meaning of this paragraph. In accordance with Article 52 paragraph 3 of the Charter, the right guaranteed here has the same meaning and scope as the right guaranteed by Article 7 of the Convention. Article 49 paragraph 3 of the Charter¹³ states the general principle of proportionality between penalties and criminal offences which is envisaged, on one hand, in the constitutional traditions of the Member States and, on the other, in the case law of the European Court of Justice. Three main principles are set forth in Article 49, namely the principle of legality (*nullem crimen, nulla poena sine lege*), of non-retroactivity, and of proportionality.

¹³ Article 49 3. „The severity of penalties must not be disproportionate to the criminal offence.”

At this point, we shall proceed to the second set of provisions, where the meaning is the same as the corresponding Articles of the Convention, but where the scope is wider:

CHARTER	CONVENTION
<p>Article 9 - Right to marry and right to found a family</p> <p><i>The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.</i></p>	<p>Article 12 - Right to marry</p> <p><i>Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.</i></p>

Article 9 of the Charter covers the same field as Article 12 of the Convention but with extended scope to other forms of marriage in an ordinary sense if these are established by national legislation, which means the modernization of the wording to cover cases where domestic legislation recognises alternatives of marriage (marriage between people of the same sex included).

CHARTER	CONVENTION
<p>Article 12 (1) - Freedom of assembly and of association</p> <p><i>1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.</i></p>	<p>Article 11 - Freedom of assembly and association</p> <p><i>1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.</i></p> <p><i>2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.</i></p>

Everyone has the right

- to freedom of peaceful assembly and
- to freedom of association at all levels, in particular in political, trade union and civic matters.

Political parties at Union level contribute to expressing the political will of the Union citizens. The meaning of Article 12 paragraph 1 of the Charter is the same as that of Article 11 of the Convention, but its scope is wider since it applies at all levels (European level included). With reference to Article 52 paragraph 3 of the Charter, limitations may not exceed those mentioned under Article 11 paragraph 2 of the Convention.

CHARTER	CONVENTION
<p>Article 14 (1), (3) - Right to education</p> <p><i>1. Everyone has the right to education and to have access to vocational and continuing training.</i></p> <p><i>(2. This right includes the possibility to receive free compulsory education.)</i></p> <p><i>3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.</i></p>	<p>Article 2 of Protocol No. 1 - Right to education</p> <p><i>No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.</i></p>

This particular Article of the Charter is to be considered with an extended scope to cover access to *vocational and continuing training*. This right covers entry to nursery, primary and secondary education, and to higher education, including university and vocational training. However, the essence of this right depends very much on the level and kind of education concerned: primary education is of a universal nature, which is compulsory and must be provided free of charge but, of course it does not mean that *all* primary education must be free.

CHARTER	CONVENTION
<p>Article 47 (1) - Right to an effective remedy and to a fair trial</p> <p><i>Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.</i></p> <p>Article 47 (2) and (3)</p> <p><i>Everyone is entitled to a fair and public hearing within a reasonable time by an</i></p>	<p>Article 13 - Right to an effective remedy</p> <p><i>Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.</i></p> <p>Article 6 (1) - Right to a fair trial</p> <p><i>1. In the determination of his civil rights and obligations or of any criminal charge against</i></p>

<p><i>independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.</i></p> <p><i>Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.</i></p>	<p><i>him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.</i></p>
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Article 47 paragraph 1 of the Charter is based on Article 13 of the Convention. The second paragraph corresponds to Article 6 paragraph 1 of the Convention. In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations, which is one of the consequences of the fact that the Union is a community based on the rule of law. As to paragraph 3, provision should be made for legal aid where the absence of such aid would go against the right to an effective remedy. This Charter Article combines two rights, namely the right to a fair trial and the right to an effective remedy.

CHARTER	CONVENTION
<p><i>Article 50 - Right not to be tried or punished twice in criminal proceedings for the same criminal offence</i></p> <p><i>No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.</i></p>	<p><i>Article 4 of Protocol No. 7 - Right not to be tried or punished twice</i></p> <p><i>1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.</i></p> <p><i>2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.</i></p> <p><i>3. No derogation from this Article shall be made under Article 15 of the Convention.</i></p>

Article 50 is to be considered with an extended scope to European Union level between the domestic courts of the Member States. This is a rule of "*non bis in idem*" requirement, or often referred to as *double jeopardy*, which also prohibits double prosecution. This principle essentially means that it is forbidden to initiate proceedings or reopen a judgment for the second time against the same person for the same offence or by the same national courts.

After the comparative overview of the abovementioned two sets of Articles, we should take a succinct look at the remainder of the Charter rights without being fully comprehensive (only referring to the most important rights) and without citing the text of those Articles.

Article 1 - Human dignity

Dignity is essentially not only a fundamental right but envisages the basis of fundamental rights, it recognizes that each human life has value, independently from any factors (e.g. social status) and this value is the same in all human beings, regardless of their characteristics (sex, race, ethnic origin, age, disability, etc.). Article 1 guarantees the right to life and prohibits torture, slavery, death penalty, eugenic practices and human cloning. Generally speaking, torture, humiliating or degrading treatment, cruel and unusual punishment, flagrant denials of fundamental rights, or even discrimination on the basis of sex, race, etc. are considered to violate human dignity.

Article 3 - Right to the integrity of the person

The principles of Article 3 are included in the Convention on Human Rights and Biomedicine. As to free and informed consent there is no violation of the right to personal integrity so long as a person concerned understands the risks and benefits that a procedure involves (as well as the alternatives to it) and freely gives his or her consent. This particular Article refers to eugenic practices (like forced sterilisation, forced pregnancy and abortion, etc.), and also to human reproductive cloning as a forbidden issue.

Article 8 of the Charter calls for protection of personal data, which guarantee is based on, amongst others, Article 8¹⁴ of the Convention.

Article 13 - Freedom of the arts and sciences

This right is arose from the right to freedom of thought and expression and it may be subject to the limitations envisaged under Article 10 of the Convention (Freedom of expression).

Article 16 - Freedom to conduct a business

This particular Article is based on the case-law of the European Court of Justice. It may be subject to the limitations provided for in Article 52 paragraph 1 of the Charter.

Article 20 - Equality before law

The principle of rule of law is included in all European constitutions and has been recognised by the Court of Justice as well. This Article corresponds to both.

Article 21 - Non-discrimination

This provision points beyond Article 14 of the Convention in providing protection. The clause does not apply to a limited class of persons, the categories of people who shall be protected

¹⁴ Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

can be extended as necessary to social needs. If a treatment among similarly situated persons significantly differs from the one considered ordinary, a reasonable and objective justification must be shown, which depends on the purpose of the measure, and a proportionate link between the measure attempted to achieve and the aim of the particular measure.

Article 23 - Equality between men and women

It concerns all areas and involves not only equality in terms of equal pay for equal but extends to equal participation in all spheres of society.

Article 24 - The rights of the child

This relates to children under the age of 18, unless the relevant domestic legislation recognises an earlier age of majority and it protects their basic interests.

Article 26 - Integration of persons with disabilities

This guarantee derives from the general requirement of non-discrimination and equal treatment.

From Article 27 to Article 38, the Charter guarantees the fundamental rights of workers and consumers under the heading of solidarity, from right to information to fair and just working conditions, from social security to health care throughout environmental protection.

Under the concept of citizens' rights in Articles 39-46, the Charter offers guarantees in order to protect rights concerning elections, the European Ombudsman, and also the freedom of movement and of residence.

Finally, it is worth to take some notes about the relationship between the European Court of Justice, the Convention and the ECtHR. Article 6 paragraph 2 of the Treaty of the European Union¹⁵ provides that the EU will accede to the Convention, which involves the EU collectively signing up to the Convention, just alike an individual country would do. When it does, the EU as a whole will be subject to the authority of the Strasbourg Court and, as a result, EU measures could be directly challenged before the Court. Apparently, the existing relationship between the ECJ and the ECtHR could be described as of mutual recognition and co-operation. After the accession it is not clear whether judgments of the ECJ will be open to challenge in Strasbourg. However, it is likely that as a result of article 6 (2) TEU there should be a right of appeal from the ECJ to the ECtHR when an act of the EU is challenged for violation of a right enshrined in the Convention. However, it is important to note that the ECJ will never become some sort of general constitutional court - it only has jurisdiction to deal with cases which fall within the scope of EU law. It is not necessary for local remedies to have been exhausted. A lower court can itself decide to refer a case to the ECJ. It is significantly different from the ECtHR, where the case must have gone all the way up to the highest court of the country concerned. If this has not been done, the ECtHR will not accept the case. After the Lisbon Treaty, the differences between the ECJ and the ECtHR might result in more human rights cases appearing before the ECJ. The binding status of the EU Charter and the possibility of a higher standard of protection might make it more attractive for people in the EU to go to Luxembourg rather than Strasbourg. We'll see...

¹⁵ Article 6 (2) of TEU

„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.”