

The EU Charter of Fundamental Rights and the protection of stateless persons in the EU



Dr Tamas MOLNAR
legal research officer
Freedom and Justice Department
Asylum, Migration and Borders Sector
Tamas.Molnar@fra.europa.eu

fra.europa.eu

Legal nature of the EU Charter of Fundamental Rights

- Having the same legal effect as the EU Treaties (primary law) since 1.12.2009 + vertical direct effect (between MS – individuals)
- CJEU has jurisdiction over it + within AFSJ (growing case-law)
- Secondary EU law & int'l agreements concluded by EU must be in conformity with it (if not → action for annulment before the CJEU) + additional normative framework for interpreting secondary EU legislation
- “Bill of rights of the EU” → it contains 54 Articles grouped into 7 Chapters

I. Dignity	II. Freedom	III. Equality	IV. Solidarity
V. Citizens rights	VI. Justice	VII. Interpretation of the Charter	

- **Material** scope (**Art.51(1)**): “*The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union [...] and to the Member States only when they are implementing Union law*” (CJEU, Åkerberg: when MSs act “in the scope of Union law” → broader)
- **Territorial** scope: not governed by the territory of the EU but by exercise of jurisdiction → in certain situations where EU/MS operate beyond the territory of the EU, Charter can apply extraterritorially. PL, UK: Protocol no. 30.
- **Interpretation** of the Charter shall be in accordance with Title VII + in particular with ECHR. Limitation of rights: **Art.52(1)**
- **Safeguard for the level of human rights protection** (**Art.53**): no right in the Charter shall be interpreted as restricting human rights recognized in other HR conventions (e.g. ICCPR, ICESCR, ECHR + their respective case-law)

	Peace – common values	Universal values	Diversity, etc	Rights more visible	Reaffirms const. and int'l rights	Rights, duties, responsibilities	Rights, freedoms and principles
Preamble							
I Dignity (Articles 1–5)	1 Human dignity	2 Life	3 Integrity of the person	4 Torture and inhuman degrading treatment or punishment		5 Slavery and forced labour	
II Freedoms (Articles 6–19)	6 Liberty and security	7 Private and family life	8 Personal data	9 Marry and found family	10 Thought conscience and religion		
	11 Expression and information	12 Assembly and association	13 Arts and sciences	14 Education	15 Choose occupation and engage in work		
	16 Conduct a business	17 Property	18 Asylum	19 Removal, expulsion or extradition			
III Equality (Articles 20–26)	20 Equality before the law	21 Non-discrimination	22 Cultural, religious and linguistic diversity	23 Equality: men and women	24 The child	25 Elderly	26 Integration of persons with disabilities
IV Solidarity (Articles 27–38)	27 Workers right to information and consultation		28 collective bargaining and action	29 Access to placement services	30 Unjustified dismissal		31 Fair and just working conditions
	32 Prohibition of child labour and protection of young people at work		33 Family and professional life	34 Social security and assistance	35 Health care	36 Access to services of general economic interest	
	37 Environmental protection	38 Consumer protection					
V Citizens' rights (Articles 39–46)	39 Vote and stand as candidate to EP	40 Vote and stand as candidate at municipal elections		41 Good administration	42 Access to documents	43 European ombudsman	
	44 Petition (EP)	45 Movement and residence	46 Diplomatic and consular protection				
VI Justice (Articles 47–50)	47 Effective remedy and fair trial	48 Presumption of innocence and right of defence		49 Legality and proportionality of criminal offences and penalties		50 <i>Ne bis in idem</i>	
VII General provisions (Articles 51–54)	51 Application	52 Scope and interpretation	53 Level of protection	54 Prohibition of abuse of rights			

- Only as a side-effect, indirectly and sporadically
- Definition: same as in 1954 New York Convention (in secondary EU law)
- Examples:
 - coordination of social security schemes within the EU (Reg. 833/2004)
 - visa-free intra-EU travel + optionally visa-free travel from visa exempted 3rd countries (Reg. 1932/2006)
 - Table of Travel Documents (Dec. 1105/2011/EU) → including travel documents issued to STL persons = mutual recognition intra-EU + some travel documents issued by 3rd countries
 - CJEU case-law: *Khalil and others* (Joined Cases C-95/99 to 98/99 and 180/99)

Article 67(2) TFEU: STL persons shall be treated as third-country nationals when devising and implementing a common policy on asylum, immigration and external border control → so far unexplored

Rights of stateless persons under the Charter – an Overview

- **Personal scope:** several rights enshrined in the Charter apply to everyone, regardless of nationality and third-country nationals' migration status or lack of nationality
- E.g. human dignity, right to life, right to physical integrity, right to liberty, right to family life, non-discrimination, right to effective remedy etc.
- As a consequence, stateless persons also enjoy this minimum set of rights

Charter rights applicable to everyone relevant for stateless persons

- right to human dignity (**Art.1**)
- right to life (**Art.2**) and to physical integrity (**Art.3**)
- prohibition of torture, inhuman and degrading treatment (**Art.4**) → relevant for detention of stateless persons
- right to liberty and security (**Art.6**) → relevant for detention of stateless persons (e.g. CJEU *Kadzoev*; C-601/15 PPU (*J.N.*))
- right to respect for private and family life (**Art.7**)
- non-discrimination (**Art. 21**)
- rights of the child (**Art.24**), cf. mutatis mutandis CJEU: C-540/03 (*EP v. Council*), *Saciri*
- right to health care (**Art.35**) (subject to restrictions in national law)
- right to an effective (judicial) remedy & to fair trial (**Art.47**)

A) Stateless persons and the right to non-discrimination under the Charter

- **Council Conclusions on STL** (Dec. 2015): Council/MS “acknowledge the importance of [...] strengthening their protection thus allowing them to enjoy core fundamental rights and reducing the risk of discrimination or unequal treatment”
- Charter right to **non-discrimination** (**Art.21**)
 - Para. (1): open list (“*such as*”), extends to any ground of status discrimination → might apply to the relation between stateless and others (EU nationals/aliens)
 - Para. (2): nationality as an explicit, self-standing prohibited ground (not yet applied by CJEU for TCNs)

A) Stateless persons and the right to non-discrimination under the Charter (cont.)

- Interpretation in conformity with **ECHR case-law** (Art. 52(3)) + Charter's **embeddedness in IHRL**: no right in the Charter shall be interpreted as restricting human rights recognized in other HR conventions (Art. 53)
- ECtHR case-law: discrimination based on nationality covered, e.g. *Andrejeva* (2009): discrimination with respect to pension rights between a permanent resident Latvian STL & citizens → statelessness can be recognized as a protected ground of discrimination if strategic litigation follows
- Further relevant IHRL standards
 - **HRC GC No 15** (1986): HR apply to everyone, irrespective of his/her nationality or statelessness → any deviation from this = exception
 - **CommESCR GC No 20** (2009): “*ground of nationality should not bar access to [...] rights [...] which] apply to everyone including non-nationals, such as [...] stateless persons*”

B) Protection of stateless persons from arbitrary detention

- **Art.6** (right to liberty & security) → criteria to avoid arbitrary detention:
 - (i) Provided for by national law
 - (ii) Carried out in pursuit of a legitimate objective
 - (iii) Non-discriminatory
 - (iv) Necessary
 - (v) Proportionate and reasonable; and
 - (vi) Carried out in accordance with the procedural and substantive safeguards of int'l law
- **EU Return Directive:** detention shall end when “*a reasonable prospect of removal no longer exists*” → quite typical in case of STL persons
- CJEU, *Kadzoev* (C-357/09 PPU) → interpreting the term “no reasonable prospect of removal” (paras. 58-67)
- CJEU, *J.N. v Staatssecretaris van Veiligheid en Justitie* (C-601/15 PPU): given the importance of the right to liberty and security of the EU Charter, and the severity of the interference that detention presents, limitations on this right shall only be allowed when strictly necessary

C) Facilitated naturalisation and the right to an effective (judicial) remedy

- **No** EU competences in nationality matters (**TEU/TFEU + Declaration No. 2 to Maastricht Treaty; 1992 Edinburgh Decl.**) → **but** since *Micheletti* (CJEU, 1992): “it is for each MS, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality”
- CJEU, *Åkerberg*: Charter applies when MSs act “in the scope of Union law”
- Possible link between naturalisation and EU law = **EU citizenship** (see similarly CJEU, *Rottmann* – re. withdrawal of EUMS nationality)
- Decisions on withdrawal of nationality: subject to judicial review by the CJEU (*Rottmann*)
- **Q:** Does **Art.47** apply to MSs’ naturalisation procedures (i.e. a specific type of admin procedure)? → if the denial of naturalisation may have arguably led to violating the right to private life/equal treatment (ECtHR analogy) or the right to be heard (general pple of EU law)
- Some scholarship argues in the affirmative (GYULAI: “*Black Box of Nationality*”)



Thank you for your kind attention!



? Questions ?



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