

Different Levels of Protection of Human Rights

§ 1 Introduction

- I. The concepts of "human rights" and "fundamental rights"
- II. The sovereignty of the state and the primary responsibility of the state for the effective protection of human rights
- III. The reasons for the plurality of human rights protection systems
 - 1) The recurring insufficiency of the national protection of human rights and the necessity of guarantees from outside the State
 - 2) The necessity of particular fundamental rights regimes for supranational powers
 - 3) Geo-regional fundamental rights regimes as expressions of identity of civilisations

§ 2 The existing human rights protection systems and their affiliation to different geographical levels

- I. The protection of human rights at the global level
- II. The protection of human rights at the pan-European level
 - 1) Introduction: two levels of geo-regional law and institutions in Europe
 - 2) Pan-European treaties on human rights
 - 3) The pan-European human rights protection system as a complement not alternative to the national protection systems
- III. The protection of human rights at the EU level
 - 1) Introduction: protection confined to EU-related affairs
 - 2) The basis: art. 6(1) and 6(2) TEU
 - 3) Some fundamental rights and guarantees with similar effects in the EC Treaty
 - 4) Fundamental rights as general principles of Union law
 - 5) The present and future role of the Charter of Fundamental Rights
- IV. The protection of human rights at the national level
 - 1) Fundamental rights in national constitutions
 - 2) Fundamental rights provided by legislation or jurisprudence
- V. The protection of human rights at a sub-national level

§ 3 General aspects of the parallelism of human rights protection systems

- I. Intensified protection through cumulative requirements
- II. Parallel operation without correlation or interference
- III. Mutual influence of interpretations

§ 4 Special problems

- I. Conflicts arising from fundamental rights concepts obliging public authorities to intervene
- II. The European Union and the European Convention on Human Rights

Conflicts between European and National Judge regarding the Protection of Human Rights

§1 Introduction

- I. The long hesitation of the European Court of Justice to provide for the protection of human rights in Community law
- II. The lack of conceptual clarity in the jurisprudence of the European Court of Justice on fundamental rights
- III. The lower standard of the protection of fundamental rights in Union law compared to the standards in the legal orders of some member states
- IV. The inclination of national jurists to take their national legal institutions and standards for granted

§ 2 The nature of conflicts between European and national judge

- I. No conflicts between the concerned fundamental rights regimes but between a specific act of the Union and the national regime
- II. Conflicts caused by discrepant statutory guarantees or by discrepant jurisprudential conceptions?

§ 3 The approach of the European and national courts to the problem

- I. European Court of Justice
- II. National courts
 - 1) Italian Constitutional Court (Corte costituzionale)
 - 2) German Federal Constitutional Court (Bundesverfassungsgericht)
 - BVerfGE 37, 271 ("Solange I")
 - BVerfGE 73, 339 ("Solange II")
 - BVerfGE 89, 155 (Maastricht judgement)
 - BVerfGE 102, 147 (Banana market organisation decision)
 - 3) Other national courts

§ 4 Clarifying amendments to the founding treaties as an appropriate way to reduce discrepancies between European and national protection of human rights

§ 5 Supplement: the problem of the ultimate decision on competences

- German Federal Constitutional Court (BVerfGE 89, 155)
- Danish Supreme Court (Maastricht judgement, 6 april 1998)

The Charter of Fundamental Rights of the European Union and its Impact on the future development of the Protection of Human Rights in Europe

§ 1 Introduction

- I. The way leading to the Charter of Fundamental Rights
- II. The contents of the Charter - an overview

§ 2 The legal significance of the Charter

- I. The field of application of the Charter
- II. The binding effect of the Charter
 - 1) According to the prevailing law and according to the Treaty of Nice
 - The Charter is no source of law but a political declaration.
 - The Charter is no source of inspiration for the jurisprudence of the ECJ, because art. 6(2) TEU does not refer to it.
 - As "soft law" of the Union, however, the Charter has the function of an aid to the interpretation of future secondary law.
 - 2) At a future inclusion in the founding treaties
- III. The Charter in the parallelism of fundamental rights regimes
 - 1) Conflicts between the Charter and other fundamental rights regimes?
 - 2) Conflicts between acts of secondary law, which comply with the Charter, and other fundamental rights regimes

§ 3 General aspects of the Charter

- I. A Comprehensive or incomplete guaranty of freedom?
- II. The systematics of the fundamental rights limits
 - 1) General limitation clause (art. 52[1])
 - 2) Transfer of limits from the ECHR (art. 52[3])
- III. Third party effect and duties of protection
- IV. The legal essence of the social rights
- V. Provisions on the objectives of the Union disguised as fundamental rights

§ 4 A selection of problems concerning individual fundamental rights

- I. Restrictability of human dignity? (art. 1)
- II. The scope of the prohibition of capital punishment (art. 2[2])

- III. The limits of the freedom of the arts and sciences (art. 13)
- IV. The freedom of the media as a particular fundamental right or as a part of the freedom of expression? (art. 11)

§ 5 Summary and concluding remarks

Excerpt from art. 6 of the Treaty on European Union

- (1) The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles that are common to the Member States.
- (2) The Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

Websites on the Charter of Fundamental Rights

- I. Charter text and explanations by the Praesidium of the Body
 - www.europarl.eu.int/charter/default_en.htm (in all languages)
- II. Websites of the Institutions
 - 1) The Body (Convent): <http://ue.eu.int/df/default.asp?lang=en> (almost all official documents)
 - 2) European Commission: http://europa.eu.int/comm/justice_home/unit/charte/index_en.html (informations about the legal and political background)
 - 3) European Parliament on the Charter: www.europarl.eu.int/charter/default_en.htm (informations about the legal and political background etc.)
- III. Web articles
 - 1) JONAS B. LISBERG: Does the EU Charter of Fundamental Rights Threaten the Supremacy of Community Law?, Harvard Jean Monnet Working Paper 4/01, www.jeanmonnetprogram.org/papers/01/010401.html
 - 2) MATTHIAS MAHLMANN: Die Grundrechtscharta der Europäischen Union (= ZEuS 2000, 419 et seq.), www.jura.uni-sb.de/projekte/Bibliothek/texte/Mahlmann.html
 - 3) ANDREW DUFF (MEP), Frequently Asked Questions on the Charter of Fundamental Rights, www.andrewduffmep.org/Policy/Charter/charterfaq4.html#Differentiation
 - 4) HERTA DÄUBLER-GMELIN: Eine Grundrechte-Charta für ein Europa der Bürgerinnen und Bürger, Forum Constitutionis Europae 8/00, www.rewi.hu-berlin.de/WHI/deutsch/fce/fce800/daeubler-gmelin.htm
- III. Opinions of Advocate Generals referring to the Charter
 - <http://europa.eu.int/jurisp/cgi-bin/form.pl?lang=en>