

# The Protection of Fundamental Rights in the European Union – A transnational portrait

The German Perspective

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# Mapping the Landscape of Fundamental Rights in the European Union

Sources of EU Law | EU Fundamental Rights | Courts involved

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## Laws in the European Union

European Union

### Primary EU Law

Treaty on European Union (TEU/EUV), Treaty of the Functioning of the European Union (TFEU/AEUV)

### Secondary EU Law (Art. 288 TFEU)

Regulation / Directive / Decision / Recommendation

Member States

### Constitutional Law

e.g. Grundgesetz (Germany), Constitutions Françaises (France), Suomen perustuslaki (Finland); Kongeriket Norges Grunnlov (Norway)

### Parliamentary Acts

As enacted on Federal or State Level

## Article 6 TEU

(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.

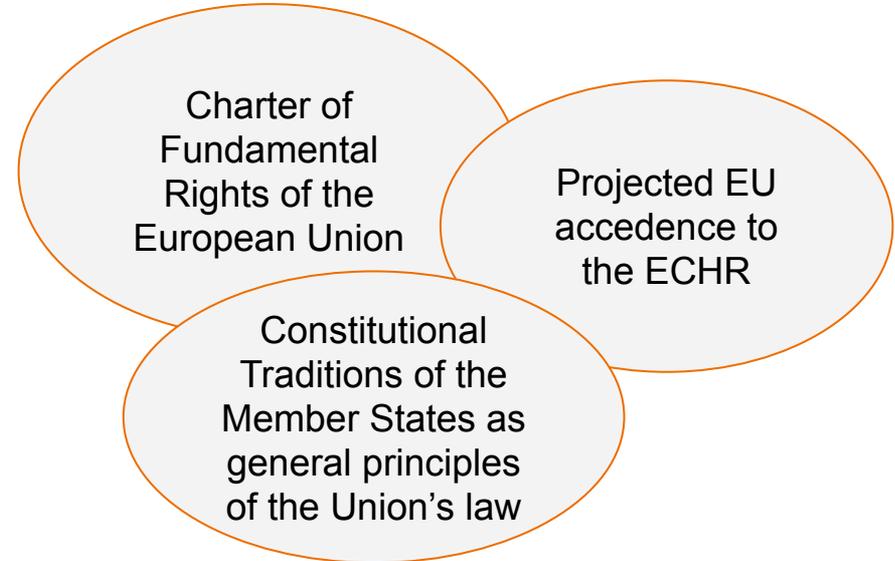
The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

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.

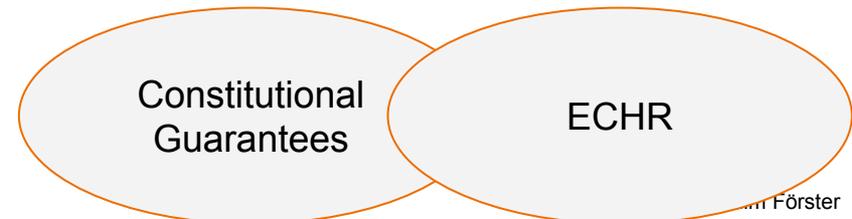
(2) The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

(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.

## Triple set of fundamental rights on EU-Level



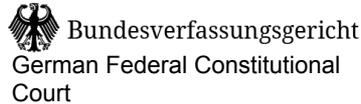
## National Protection in Member States



### Courts involved (select.)



Court of Justice of the  
European Union



**BUNDESGERICHTSHOF**  
German Federal Court of  
Justice

Landgericht  
Schweinfurt



Regional Court of Schweinfurt

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# Applying the Charta of Fundamental Rights in the EU

Scenarios | Cases | Implications

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## EU Charta of Fundamental Rights

### Article 51 Field of application

(1) The provisions of this Charter are addressed to the institutions, bodies, offices and agencies 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 and respecting the limits of the powers of the Union as conferred on it in the Treaties.

(2) [...]

## Application Scenarios

1. **Application of EU-Law through EU institutions, e.g.**
  - Decisions of the EU Commission
  - Passing of EU Directives
2. **Application of EU-Law through Member States**
  - “Agency”-Situations
  - Implementation of EU-Law (e.g. Directives) and Interpretation of national laws that implement EU-Law

## What the case was about

- EU-US transfer of personal data based on the Commission’s adequacy decision with respect to the EU-US Privacy Shield Framework

## What the ECJ held

- Adequacy decision of the EU Commission does not ensure an adequate level of protection and, thus, is incompatible with Art. 8 of the EU Charta of Fundamental Rights

## How the decision affects member states and citizens

- EU-US data transfer can no longer be based on the Privacy Shield Framework and instead requires the use of standard contractual clauses + individual assessment on the adequate level of protection by the data exporteur
- Member states and their agencies (e.g. Bavarian Data Protection Commissioner) are directly bound by this decision



### Art. 45 GDPR

(1) <sup>1</sup>A transfer of personal data to a third country or an international organisation may take place where the **Commission has decided** that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question **ensures an adequate level of protection**. <sup>2</sup>Such a transfer shall not require any specific authorisation.

(2) [...]

### What the case was about

- German Media Group publishes news-related Military Status Reports on the Internet
- German Government sues for Copyright Infringement

### What the Courts held

- **ECJ:**
  - Sec. 50 UrhG is a national implementation of EU Law (InfoSocDirective 29/2001) and is subject to the EU Fundamental Rights Protection
  - Exclusive Rights of Copyright Owners and Limitations of those Rights have to be balanced; Freedom of Press (Art. 11 EU-Charta) has to be respected within this balance
- **BGH:**
  - Court is bound to interpret Sec. 50 UrhG in accordance to EU Law and has to secure EU-adequate protection of fundamental rights
  - Thus, Sec. 50 UrhG allows the publication of the reports

### How the decision affects member states and citizens

- ECJ/BGH Rulings lead to a press-friendly interpretation of Sec. 50 UrhG



#### Sec. 50 UrhG Reporting on current events

For the purposes of reporting on current events by broadcasting or similar technical means in newspapers, periodicals and other printed matter or other data carriers mainly devoted to current events, as well as on film, the reproduction, distribution and communication to the public of works which become perceivable in the course of these events shall be permitted to the extent justified by the purpose of the report.

## Uncertainties and Potential Conflicts

- Scope of Art. 51 Charta with respect to national provisions that are related to EU Law but do not directly apply or transform EU Law
  - ECJ, 26.01.2013/C617/10 (Åkerberg Fransson)
  - BVerfG, 24.04.2013/1 BvR 1215/07 (Antiterrordatei)
- Projected Accedence of the EU to the ECHR will hopefully lead to more harmonisation



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