
THE LINK BETWEEN THE EU AND THE ECHR

Sara Hoxha

ABSTRACT: *The ECHR has played a major role in incorporating the ECHR as part of the EC's general principles, which assured the EU and its institutions to look at issues from the perspective of human rights. The ECHR has considered the convention as an unwritten human rights record in the EU. However, this was not enough to avoid the uncertainty in protecting human rights in the EU. The Treaty of Amsterdam for the first time became a general reference to the convention. An important step is considered Article 6 (2) of the Amsterdam Treaty. With the new status of the Charter following the Treaty of Lisbon, there are two international human rights documents belonging to the two supranational organizations, closed: on the one hand, the Council of Europe and the ECHR convention with the jurisprudence of her and in turn the Card inspired more by the ECHR and its jurisprudence. The question posed by this point is: Is the Charter a competitive or a threat to the convention system? Does the Charter come as an alternative to the Convention on the Protection of Human Rights in the EU?*

KEYWORDS: EU, ECHR, Treaty of Lisbon, Human Rights

Charter and ECHR.

The Charter contains all the rights set forth in the convention, but in most of the articles without the exact same terms as the latter. The Convention Convenience Cards are omitted and the purpose of these rights is extended or narrowed. Article 52 (3) of the Charter is important here as it provides that when it comes to the corresponding rights between the Charter and the ECHR, the latter will serve as a minimum standard. This article applies to interpreting the Charter in parallel with the ECHR, because it imposes a general restriction by accepting the ECHR as the minimum standard.

The rights provided by the ECHR and the EU Human Rights Charter.

As we have said, human rights under the ECHR are not static. The ECHR case law has expanded the scope of the ECHR. One aspect of socio-economic rights is that they do not expand EU powers, but their existence contributes to the EU closer to citizens. The EU placed citizens at the heart of their actions, including the notion of European citizenship, and thus became an organization of citizens rather than a mostly economic body. Including these rights on the Charter brought the Union closer to a federal structure where its citizens speak different languages and have different cultures.

EU accession to the ECHR

The provisions of the ECHR have gained authority and legitimacy through implementation, interpretation and development by the ECHR, the ECJ and the domestic courts. However, given that the EU is not part of the ECHR, it is not directly binding on EU institutions. The EU should therefore find a way to be restricted by an instrument of human rights. In other words, acts implemented by the EU should be subject to external control, as the ECHR controls the member countries that are part of the convention.

The first idea has been the adherence to the convention, an idea that has played an important role. According to Toth: 'Adherence to the ECHR will bring obvious advantages'. It shows a committed commitment to the protection of human rights. The EU will be subject to the same control as the member countries. It will have a written catalog that is also interpreted by a voluminous jurisprudence, which will add legal certainty. The convention will eventually be included within the order law of the EU.

Legal security was one of the reasons for joining the EU at the convention. The second reason was to avoid the different interpretation of the same rights by the two courts. This would come as a result of both courts using the teleological method of interpretation. Thus, the ECHR interprets the convention according to the objectives of the convention, the ECHR interprets it according to the objectives of the EU. The latter do not always correspond, as the purpose of the convention is to protect the individual as a human being, and the goal of the EU is to further social and economic integration.

Uneven Interpretations

Interpretation and application of the convention by the ECHR and the ECJ has led to significant advances in human rights at European level. There have been readiness by the ECJ judges to inspire both the Convention and the ECHR jurisprudence and this allowed for peaceful coexistence between these two mechanisms, but due to the different objectives of the two systems as explained above, the developments have not always been parallel. Since the 1969 Strausser case, the ECJ has once interpreted the convention in a wider sense than the ECHR, sometimes interpreted in a narrower sense.

In the Gerard van der Wal case, the ECJ developed a broad understanding of the protection of the right to information. Regarding access to EC documents, the ECJ ruled that respect for national procedures would be sufficiently guaranteed if the Commission ensures that the dissemination of documents was not illegal.

In the issue of 'War and Other Issues', the people complained that the Italian government failed to take measures to inform them of the actions they had to take if an accident occurred at a nearby chemical plant. The ECJ said in this case that Article 10 of the ECHR does not imply a positive obligation to collect and disseminate this info.

In some cases the ECJ has interpreted the convention closer than the ECHR. In the Hoechst case, the ECJ stated that Article 8 (1) of the Convention applies only to private residences of natural persons and not to places where they conduct their business.

Whereas in the Niemietz case, the ECHR said that the terms 'private' and 'home' should be interpreted as inclusive of some professional or business activities and this is closely related to the purpose of Article 8 in order to avoid arbitrary interference by public authorities.

CONCLUSIONS

The ECHR has played a major role in incorporating the ECHR as part of the EC's general principles, which assured the EU and its institutions to look at issues from the perspective of human rights. The ECHR has considered the convention as an unwritten human rights record in the EU. However, this was not enough to avoid the uncertainty in protecting human rights in the EU. The Treaty of Amsterdam for the first time became a general reference to the convention. An important step is considered Article 6 (2) of the Amsterdam Treaty. With the new status of the Charter following the Treaty of Lisbon, there are two international human rights documents belonging to the two supranational organizations, closed: on the one hand, the Council of Europe and the ECHR convention with the jurisprudence of her and in turn the Card inspired more by the ECHR and its jurisprudence.