I. Basic Information

1999-2000 initiative of the European Council – to ‘showcase’ the achievements of the EU in the field of human rights protection

2000 - Charter proclaimed by the Commission, Parliament and Council and politically approved by MSs at the Nice European Council Summit Not legally binding

2004 – Part II of the EU Constitutional Treaty


Article 6 (1) 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.
CONTENT

to consolidate and render visible the EU’s existing obligations to respect fundamental right’s rather than to create anything new

Sources:

1. International agreements (especially ECHR, European Social Charter)

2. Common constitutional traditions of MSs

3. General Principles of EU law

Preamble

I Dignity - foundational rights (right to life, freedom from torture, slavery and execution)

II Freedoms - basic civil and political liberties to be found in the ECHR + social rights

III Equality - equality-before-the-law- guarantee

IV Solidarity - labour rights and social rights

V Citizens’s Rights - directed only to EU Citizens

VI Justice - procedural guarantees

VII Chapter - ‘HORIZONTAL’ Clauses
- Applicability
- Standard of protection
- Addressees of the Charter

Distinction between:

1) **rights** – respected/ may be directly invoked before the courts/ e.g. right to privacy

Article 7 Respect for private and family life

**Everyone has the right to respect for his or her private and family life, home and communications**

2) **freedoms** – normative content depends upon national or Union law (refer to national law and practice/ e.g. right to marry /art. 9

**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**

3) **principles** – observed/ cannot be generally invoked before the courts, addresses institutions and MSs when exercising legislative or executive powers within EU competences/ only in such a situation they can be invoked

“must be respected and protected”, “the Union shall respect”, “shall be guaranteed”

Art. 25 The rights of the elderly

**The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.**
Art. 27
Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

APPLICABILITY AND ADDRESSEES

1. General Principles
   - The principle of conferral
   - The principle of subsidiarity
   - The principle of proportionality

2. Art. 6 of the TEU

3. Art. 51 of the Charter

4. The Explanations

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. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.
To whom:

1) institutions, bodies, offices and agencies of the EU with due regard for the principle of subsidiarity

2) MSs - only when they are implementing EU law

3) Individuals ?????
When:

1) To all action taken by EU institutions, bodies, offices … e.g.
   - Legislative procedure
   - Labour and work contracts

2) To MS when “implementing Union law”
   - Direct application of EU law (Treaties, regulations)
   - National law that implements EU law (e.g. law implementing EU directive)
   - Derogations from freedoms (public order, public health, public security) C-390/12 Pfleger – services/gaming machines
   - National law that aims to safeguard/is used to fulfil aims of EU law
**C-617/10 Fransson**

EU FR - applicable in all situations governed by EU law, but not outside such situations

CJEU has no power to examine the compatibility with the ChFR of national legislation lying outside the scope of EU law

“That said, where a court of a Member State is called upon to review whether fundamental rights are complied with by a national provision or measure which, in a situation where action of the Member States is not entirely determined by European Union law, implements the latter for the purposes of Article 51(1) of the Charter, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of European Union law are not thereby compromised” (see para 28)

**C-206/13 Siragusa**

a degree of connection with EU law

- whether that legislation is intended to implement EU law
- the nature of that legislation
- whether it pursues objectives other than those covered by EU law
- whether there are specific rules of EU law on the matter or capable of affecting it
Protocol no 30 ‘Polish British Protocol’

• Fear of imposing ‘moral standards’ on the Polish law
  - non-discrimination clause (homosexual partners)
  - Right to privacy (sexual health and family planning)
  - Revindication of the western parts of Poland by German citizens

Legal character

  - International agreement, an amendment to the Treaty of Lisbon/ opt-out
    - C-411/10 and C-493/10 N.S. case
  - Aim – to ascertain the limits of the interpretation of the Charter

Art. 1 Protocol no 30

The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.

In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.
Declaration no 62 of Poland

Poland declares that, having regard to the tradition of social movement of "Solidarity" and its significant contribution to the struggle for social and labour rights, it fully respects social and labour rights, as established by European Union law, and in particular those reaffirmed in Title IV of the Charter of Fundamental Rights of the European Union.

Art. 2 Protocol no 30

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom.
C-411/10 and C-493/10 N.S. and M.E Joined Cases

An asylum seeker may not be transferred to a Member State where he risks being subjected to inhuman treatment

*EU law does not permit a conclusive presumption that Member States observe the fundamental rights conferred on asylum seekers*

According to the wording of that provision, as noted by the Advocate General in points 169 and 170 of her Opinion in Case C-411/10, Protocol (No 30) **does not call into question the applicability of the Charter** in the United Kingdom or in Poland, a position which is confirmed by the recitals in the preamble to that protocol. Thus, according to the third recital in the preamble to Protocol (No 30), **Article 6 TEU requires the Charter to be applied and interpreted by the courts of Poland and of the United Kingdom strictly in accordance with the explanations referred to in that article.** In addition, according to the sixth recital in the preamble to that protocol, the **Charter reaffirms** the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles.

In those circumstances, **Article 1(1) of Protocol (No 30) explains Article 51 of the Charter with regard to the scope thereof and does not intend to exempt the Republic of Poland or the United Kingdom from the obligation to comply with the provisions of the Charter or to prevent a court of one of those Member States from ensuring compliance with those provisions.**

Since the rights referred to in the cases in the main proceedings do not form part of Title IV of the Charter, there is no need to rule on the interpretation of Article 1(2) of Protocol (No 30).

(see paras 119, 120, 121)
Possible application

- Provisions of the Charter are confirmed in Polish law or practice
- Application is possible only within the scope of protection as defined by Polish law and practices

STANDARD OF PROTECTION

- In accordance with MS constitutions (but see Melloni case)
- In accordance with ECHR (but see J.McB v.L.E. case)

Article 52 Scope and interpretation of rights and principles

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 for which provision is made in the Treaties 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.
C-400/10 PPU. J.McB v.L.E.

The Hague Convention/ child abduction/ custody/

where Charter rights parallel ECHR rights, the CJEU should follow any clear and constant jurisprudence of the ECtHR

53 Moreover, it follows from Article 52(3) of the Charter that, in so far as the Charter contains rights which correspond to rights guaranteed by the ECHR, their meaning and scope are to be the same as those laid down by the ECHR. However, that provision does not preclude the grant of wider protection by European Union law. Under Article 7 of the Charter, ‘[e]veryone has the right to respect for his or her private and family life, home and communications’. The wording of Article 8(1) of the ECHR is identical to that of the said Article 7, except that it uses the expression ‘correspondence’ instead of ‘communications’. That being so, it is clear that the said Article 7 contains rights corresponding to those guaranteed by Article 8(1) of the ECHR. Article 7 of the Charter must therefore be given the same meaning and the same scope as Article 8(1) of the ECHR, as interpreted by the case-law of the European Court of Human Rights (see, by analogy, Case C-450/06 Varec [2008] ECR I-581, paragraph 48).

54 The European Court of Human Rights has already considered a case in which the facts were comparable to those of the case in the main proceedings, where the child of an unmarried couple was taken to another State by its mother, who was the only person with parental responsibility for that child. In that regard, that court ruled, in essence, that national legislation granting, by operation of law, parental responsibility for such a child solely to the child’s mother is not contrary to Article 8 of the ECHR, interpreted in the light of the 1980 Hague Convention, provided that it permits the child’s father, not vested with parental responsibility, to ask the national court with jurisdiction to vary the award of that responsibility (Guichard v.France ECHR 2003-X 714; see also, to that effect, Balbontin v.United Kingdom, no.39067/97, 14 September 1999).

55 It follows that, for the purposes of applying Regulation No 2201/2003 in order to determine whether the removal of a child, taken to another Member State by its mother, is lawful, that child’s natural father must have the right to apply to the national court with jurisdiction, before the removal, in order to request that rights of custody in respect of his child be awarded to him, which, in such a context, constitutes the very essence of the right of a natural father to a private and family life.

56 The European Court of Human Rights has also ruled that national legislation which does not allow the natural father any possibility of obtaining rights of custody in respect of his child in the absence of the mother’s agreement constitutes unjustified discrimination against the father and is therefore a breach of Article 14 of the ECHR, taken together with Article 8 of the ECHR (Zauneggerv.Germany, no. 22028/04, § 63 and 64, 3 December 2009).
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.

Melloni, Case C-399/11

Does art. 53 give general authorisation to a MS to apply standard of protection of FRs guaranteed by its constitution when that standard is higher than that deriving from the CHFR and give it priority over the application of EU law?

- European arrest warrant/ sentence rendered in absentia/

Article 53 of the Charter of Fundamental Rights of the European Union must be interpreted as not allowing a Member State to make the surrender of a person convicted in absentia conditional upon the conviction being open to review in the issuing Member State, in order to avoid an adverse effect on the right to a fair trial and the rights of the defence guaranteed by its constitution.

A different interpretation of Article 53 of the Charter would undermine the principle of the primacy of EU law inasmuch as it would allow a Member State to disapply EU legal rules which are fully in compliance with the Charter where they infringe the fundamental rights guaranteed by that State’s constitution.

It is true that Article 53 of the Charter confirms that, where an EU legal act calls for national implementing measures, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of EU law are not thereby compromised. However, Article 4a(1) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States, as amended by Framework Decision 2009/299, does not allow Member States to refuse to execute a European arrest warrant when the person concerned is in one of the situations provided for therein.
C-131/12 Google Spain

The Court has already held that the provisions of Directive 95/46, in so far as they govern the processing of personal data liable to infringe fundamental freedoms, in particular the right to privacy, must necessarily be interpreted in the light of fundamental rights, which, according to settled case-law, form an integral part of the general principles of law whose observance the Court ensures and which are now set out in the Charter.

As the data subject may, in the light of his fundamental rights under Articles 7 and 8 of the Charter, request that the information in question no longer be made available to the general public on account of its inclusion in such a list of results, those rights override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that information upon a search relating to the data subject’s name.

(see paras 68, 99)
Is the Charter applicable in relations between individuals?

– ONLY IF the rights inscribed in the Charter had already been considered by the Court as general principles of law???

Is the horizontal direct effect of the CHFR possible? YES

New case-law ➔

some provisions of the CHFR could be directly applicable against individuals

C-414/16 Vera Egenberger/Evangelisches Werk für Diakonie … (17 April 2018)

C-569/16 and C-570/16 Stadt Wuppertal/Maria E. Bauer; Volker W./M.Broßonn (6 November 2018)
- The directive 2000/78/EC establishing the general framework for equal treatment in employment and occupation – interpreted by the CJEU ⇒ autonomy of the Churches and the right not to be discriminated against on grounds of religion or belief (have to be balanced)

- The requirement of religious affiliation for a post within the Church must be amenable to effective judicial review

- Art. 21 and 47 CHFR are directly applicable against individuals

The CJEU held:

The courts obliged to interpret national law transposing the directive, as far as possible in conformity with that directive. Should it prove impossible, they will have to disapply national law.

Since the Charter is applicable, the national court must ensure the judicial protection deriving for individuals from the prohibition of all discrimination on grounds of religion or belief (laid down in Article 21 of the Charter, that prohibition is mandatory as a general principle of EU law) and the right to effective judicial protection (laid down in Article 47 of the Charter). Both that prohibition of discrimination and the right to effective judicial protection are sufficient in themselves to confer on individuals a right which they may rely on as such in disputes between them and other individuals in a field covered by EU law.
C-569/16 and C-570/16 Stadt Wuppertal/Maria E. Bauer; Volker W./M.Broßonn (6 November 2018)

Stadt Wuppertal/Maria E. Bauer – vertical relations, the directive can be directly applicable
Volker W./M.Broßonn – horizontal relations

Art. 31 CHFR

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

62 In the light of the foregoing, and in view of what has been stated in paragraphs 38 to 50 of the present judgment, it must be held that, where an employment relationship is terminated by the death of the worker, it follows not only from Article 7(2) of Directive 2003/88 but also from Article 31(2) of the Charter that, in order to prevent the fundamental right to paid annual leave acquired by that worker from being retroactively lost, including the financial aspect of those rights, the right of the person concerned to an allowance in lieu of leave which has not been taken may be passed on by inheritance to his legal heirs. (⋯)

83 Article 7 of Directive 93/104 and Article 7 of Directive 2003/88 did not, therefore, themselves establish the right to paid annual leave, which is based in particular on various international instruments (⋯) and is, as an essential principle of EU social law, mandatory in nature (⋯), that essential principle including, as noted in paragraph 58 of the present judgment, the right to ‘paid’ annual leave as such and the right, inherent in the former, to an allowance in lieu of annual leave not taken upon termination of the employment relationship.

84 By providing in mandatory terms that ‘every worker’ has ‘the right’ ‘to an annual period of paid leave’ — like, for example, Article 27 of the Charter which led to the judgment of 15 January 2014, Association de médiation sociale (C-176/12, EU:C:2014:2) — without referring in particular in that regard to ‘the cases and... conditions provided for by Union law and national laws and practices’, Article 31(2) of the Charter reflects the essential principle of EU social law from which there may be derogations only in compliance with the strict conditions laid down in Article 52(1) of the Charter and, in particular, the fundamental right to paid annual leave.
The right to a period of paid annual leave, affirmed for every worker by Article 31(2) of the Charter, is thus, as regards its very existence, both mandatory and unconditional in nature, the unconditional nature not needing to be given concrete expression by the provisions of EU or national law, which are only required to specify the exact duration of annual leave and, where appropriate, certain conditions for the exercise of that right. It follows that that provision is sufficient in itself to confer on workers a right that they may actually rely on in disputes between them and their employer in a field covered by EU law and therefore falling within the scope of the Charter (see, by analogy, judgment of 17 April 2018, Egenberger, C-414/16, EU:C:2018:257, paragraph 76).

Article 31(2) of the Charter therefore entails, in particular, as regards the situations falling within the scope thereof, first, that the national court must disapply national legislation such as that at issue in the main proceedings pursuant to which the death of a worker retroactively deprives him of his entitlement to paid annual leave acquired before his death, and, accordingly, his legal heirs of the entitlement to the allowance in lieu thereof by way of the financial settlement of those rights, and, second, that employers cannot rely on that national legislation in order to avoid payment of the allowance in lieu which they are required to pay pursuant to the fundamental right guaranteed by that provision.

With respect to the effect of Article 31(2) of the Charter on an employer who is a private individual, it should be noted that, although Article 51(1) of the Charter states that the provisions thereof are addressed to the institutions, bodies, offices and agencies of the European Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing EU law, Article 51(1) does not, however, address the question whether those individuals may, where appropriate, be directly required to comply with certain provisions of the Charter and cannot, accordingly, be interpreted as meaning that it would systematically preclude such a possibility.

First of all, as noted by the Advocate General in point 78 of his Opinion, the fact that certain provisions of primary law are addressed principally to the Member States does not preclude their application to relations between individuals (see, to that effect, judgment of 17 April 2018, Egenberger, C-414/16, EU:C:2018:257, paragraph 77).

Next, the Court has, in particular, already held that the prohibition laid down in Article 21(1) of the Charter is sufficient in itself to confer on individuals a right which they may rely on as such in a dispute with another individual (judgment of 17 April 2018, Egenberger, C-414/16, EU:C:2018:257, paragraph 76), without, therefore, Article 51(1) of the Charter preventing it.

Finally, as regards, more specifically, Article 31(2) of the Charter, it must be noted that the right of every worker to paid annual leave entails, by its very nature, a corresponding obligation on the employer, which is to grant such periods of paid leave.

18
In the event that the referring court is unable to interpret the national legislation at issue in a manner ensuring its compliance with Article 31(2) of the Charter, it will therefore be required, in a situation such as that in the particular legal context of Case C-570/16, to ensure, within its jurisdiction, the judicial protection for individuals flowing from that provision and to guarantee the full effectiveness thereof by disapplying if need be that national legislation (see, by analogy, judgment of 17 April 2018, Egenberger, C-414/16, EU:C:2018:257, paragraph 76).
The EU and the ECHR

Art. 6 (3) TEU
**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**.

Art. 52 (3) CHFR 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.**

Art. 53 CHFR 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.

Both the ECtHR and the CJEU apply similar test – **reasonable and proportional restriction test**

They assess whether the interference of public authorities with the rights or freedoms:
- was provided for by law and respect the essence of those rights and freedoms,
- its objectives were justified (meet objectives of general interest or the need to protect the rights and freedoms of others),
- was "necessary in a democratic society" to achieve this goal
Indirect review of EU acts by the ECtHR

**Melchers & Co. v. Germany** (no. 13258/87) 1990/ Commission decision/CJEU decision

The applicant company complained of the fact that Germany had enforced a fine imposed on it by the European Commission (in anti-trust proceedings) and upheld by the CJEU. It considered that several of its rights had been breached, including the right to be presumed innocent.

**Cantoni v. France** (no. 17862/91) 1996/ directive

A supermarket manager contended that his conviction for unlawfully selling pharmaceutical products had not been foreseeable because the definition of a “medicinal product” was too imprecise in the French legislation, which was based almost word for word on a Community directive.

**Mathews v. UK** (no. 24833/94) 1999/ treaty

A United Kingdom national resident in Gibraltar alleged a breach of her right to free elections on account of the fact that the United Kingdom had not organised elections to the European Parliament in Gibraltar.

**Bosphorus v. Ireland** (45036/98) 2005/ regulation

An aircraft leased by the applicant company to a Yugoslavian company was impounded in 1993 by the Irish authorities under a Community Regulation giving effect to UN sanctions against the Federal Republic of Yugoslavia.
Equivalent protection test
Presumption rebuttable/ case by case

Any activity of MS arising from obligations to an international organisation is compliant with ECHR so long as the organisation protects human rights, both in substance as well as in its control mechanisms, in a way which can be considered to be equivalent to that provided by the convention.

If not – MS becomes liable for a breach of the international organisation
Ullens de Schooten and Rezabek v. Belgium  
(no. 3989/07 and 38353/07) 2011 – national court refused to submit a preliminary question to the CJEU – no violation of Art. 6 ECHR

Dhabi v. Italy 2014 — violation of Art. 6 ECHR/ Italian court did not give the reasons of its decision not submit to the CJEU preliminary questions

M.S.S. v. Belgium and Greece (no. 30696/09) 2011 ➔ regulation !!!!

The applicant is an Afghan national who entered the EU via Greece before arriving in Belgium, where he applied for asylum. In accordance with the Dublin II Regulation, the Belgian Aliens Office asked the Greek authorities to take responsibility for the asylum application. The applicant complained in particular about the conditions of his detention and his living conditions in Greece, and alleged that he had no effective remedy in Greek law in respect of these complaints. He further complained that Belgium had exposed him to the risks arising from the deficiencies in the asylum procedure in Greece and to the poor detention and living conditions to which asylum seekers were subjected there. He further maintained that there was no effective remedy under Belgian law in respect of those complaints.

➔ the CJEU accepted this standard in C-411/10 N.S. …

Michaud v. France (no. 12323/11) 2012/ national law transposing the EU directive

- obligation on French lawyers to report their “suspicions” regarding possible money laundering activities by their clients

- Art. 8 ECHR/ protects the confidentiality of lawyer-client relations

Is the presumption of equivalent protection applicable in this case?
Accession to the ECHR

- 1979 Commission proposal
- 1990 Commission proposal ➔ opinion 2/94
- Treaty of Lisbon – Art. 6 (2) TEU
- Protocol 14 to ECHR – Art. 59 ECHR amended / entered into force 2010/ Russia ratified

Arguments for accession

- EU credibility/ the CJEU criticized for using FRs for extension of the EU competence, or for achieving commercial objectives/ the CJEU is not HRs court
- MSs acts review – possible conflicts
- Need for independent EU acts review

DECLARATION ON ARTICLE 6(2) TEU
The Conference agrees that the Union's accession to the European Convention on the protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the Union accedes to that Convention.

EU Accession – preparatory stage

Working group established

Joint Communique of the Courts’ Presidents Costa/Skouris 2011 - ‘prior involvement mechanism’ (procedural instrument by which a case brought to Strasbourg is suspended in order for the CJEU to give its judgment on the compatibility of an EU act with the ECHR rights involved, if the CJEU has not previously had the opportunity to adjudicate this matter)
Draft accession agreement 2011/ 2013

- Accession also to some of the protocols
- Actions against the EU – co-respondent mechanism
- Actions against MSs applying EU law - co-respondent mechanism/ ECtHR decision on its own motion or the EU request/ Art. 3/ joint responsibility/
- Prior involvement mechanism/ ECtHR decides
- Actions MS against MS/art. 55 ECHR/art. 344 TFUE
- EU judge
- The EU in the Council of Ministers meetings

Opinion 2/13 – 18 December 2014

Co-respondent mechanism/ decision in the hands of the ECtHR/ would decide on the division of the competence between MSs and the EU

Prior involvement mechanism/ ECtHR decides/ would interpret EU law but is only competent to review its legality

Actions MS/MS – not eliminated, contrary to art. 344 TFUE

Threats to the dialogue between national courts and the CJEU/ they may not submit preliminary questions to the CJEU because the EU could be co-respondent

ECtHR would be able to review CFSP measures/while the CJEU not