

## Chapter 4

### Fundamental Rights

#### 1. The Birth of European Fundamental Rights

- (a) The European Standard – an “Autonomous” Standard
- (b) Limitations, and “Limitations on Limitations”

#### 2. United Nations Law: External Limits to European Human Rights?

#### 3. The Charter of Fundamental Rights

- (a) (Hard) Rights and (Soft) Principles
- (b) Limitations, and “Limitations on Limitations”

#### 4. The “External” Bill of Rights: the European Convention on Human Rights

- (a) Before Accession: Indirect Review of Union Law
- (b) After Accession: Direct Review of Union Law

#### Conclusion

### Introduction \*

The protection of human rights is a central task of many modern constitutions. Fundamental rights are here designed to set protective limits to governmental action(s). This protective task is principally transferred onto the judiciary and involves the judicial review of governmental action. The protection of human rights may be limited to judicial review of the executive. But in its expansive form, it extends to the review of parliamentary legislation.

The European Union follows this wider constitutional tradition. It considers itself to be “founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights”. Human rights are thus given a “foundational” status and constitutionally limit the exercise of all Union competences.

What are the sources of human rights in the Union legal order? While there was no “Bill of Rights” in the original Treaties, three sources for European fundamental rights were subsequently developed. The European Court first began distilling general principles protecting fundamental rights from the constitutional traditions of the Member States. This *unwritten* bill of rights was inspired and informed by a second bill of rights: the European Convention on Human Rights. This *external* bill of rights was, decades later, matched by a *written* bill of rights specifically for the European Union:

\* All footnotes omitted.

the Charter of Fundamental Rights. These three sources of European human rights are now expressly referred to – in reverse order – in Article 6 of the Treaty on European Union:

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 ...
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.

What is the nature and effect of each source of fundamental rights? And to what extent will they limit the Union? This Chapter investigates the three bills of rights of the Union. Section 1 starts with the discovery of an “unwritten” bill of rights in the form of general principles of European law. Section 2 subsequently discusses possible structural limits to European human rights in the form of international obligations flowing from the United Nations Charter. Section 3 analyses the Union's “written” bill of rights in the form of its Charter of Fundamental Rights. Finally, Section 4 explores the European Convention on Human Rights as an external bill of rights for the European Union.