

Can European Union fundamental rights be enjoyed only by certain Union citizens or only in certain situations? Even though it seems to be contrary to a logic and a sense of justice this is the case in the current state of development of Union law. The Charter of Fundamental Rights of the European Union, according to its Article 51(1), applies to the Member States only when they are implementing Union law. EU fundamental rights are thus inapplicable against Member States in so-called purely internal situations. Even if the Charter is binding for all Member States and the preamble and the rights in the Charter are formulated in a universal manner, it means that for example the provisions 'Human dignity is inviolable. It must be respected and protected' (Art. 1 of the Charter) or 'Everyone has the right to respect for his or her physical and mental integrity' (Art. 2 of the Charter) may be invoked against a Member State by a Union citizen only if he/she can demonstrate that his/her case is governed by Union law.

This regulatory solution is justified by the division of competences between the Union and the Member States. However, while it was acceptable at a time when integration was purely economic and EU law concerned mainly people moving to other Member States, it has been increasingly controversial since the introduction of Union citizenship in 1993, which is granted to all nationals of Member States. Such a narrow scope of application of EU fundamental rights does not meet the need to protect individuals in the current state of development of integration.

In addition, in practice, sometimes the EU fundamental rights are already applied in the sphere of Member States' own competences. All national laws, including those in the field of exclusive Member States' competences, must not contravene EU principles – freedoms of internal market, freedom of movement of Union citizens. A further breakthrough in the application of fundamental rights was brought about by recent CJEU case law on the obligation of Member States to provide effective judicial protection which covers all national courts that can potentially apply Union law.

The aim of the project is to analyse the challenges of extending the application of EU fundamental rights against Member States of the Union. This will enable the development of guidelines for Member States with a view to possible treaty reform and for the CJEU with a view to developing case law consistency.

Fundamental research questions:

Q.1. What is the current scope of application of EU fundamental rights against EU Member States?

Q.2. Should (all) EU fundamental rights be applied to Member States in purely internal situations? If only some, which ones? For instance, should they be the same as the rights protected by the ECHR?

Q.3. How to determine the EU standard of fundamental rights applicable to Member States in view of the significant differences in the level of protection of these rights? Should the margin of appreciation doctrine developed by the ECtHR be applied?

Q.4. In the event of such a radical expansion of the scope of application of EU fundamental rights, how should the number of cases pending before the CJEU be limited?

In order to answer the fundamental research question of the project - whether all fundamental rights of the Union should apply to the Member States in all situations - it is necessary to carry out three main research tasks. First, the theoretical reconstruction of the state of EU law on the division of competences and scope of application of EU law will be done. Second part of project will be devoted to the reconstruction of the actual scope of application of fundamental rights against Member States. Special attention will be given to the application of obligations under EU law in areas of Member States' own competence. Those Finally, in the frame of third research task the synthesis and critical comparative works will be done. A more advanced scenario would be analysed: the application of all Charter rights to Member States. Additionally, other more nuanced scenarios will be checked. This part will involve also taking into account the ECHR and national constitutions.