



## **PRE-TRIAL DETENTION**

*Introductory presentation on the fundamental rights standards in relation to pre-detention based on the EU Charter of Fundamental Rights and European Convention on Human Rights and the and relevant case law of CJEU and ECtHR*

# Fundamental rights protection in the European Union

## Two sources of fundamental rights protection

### EU Charter of Fundamental Rights

- Article 6(1) of the Treaty on European Union
- "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union [...] which shall have the same legal value as the Treaties."

Dignity  
Freedoms  
Equality  
Solidarity  
Citizens' rights  
Justice  
and  
General provisions



Written catalogue  
of rights

### General principles of EU law

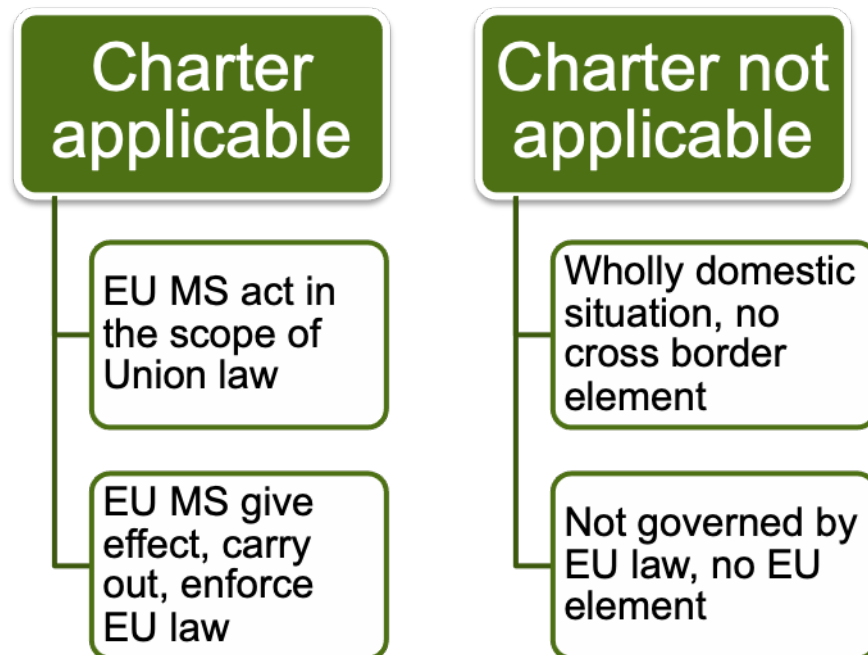
- Article 6(3) of the Treaty on European Union
- "Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."



Unwritten principles identified  
by the CJEU

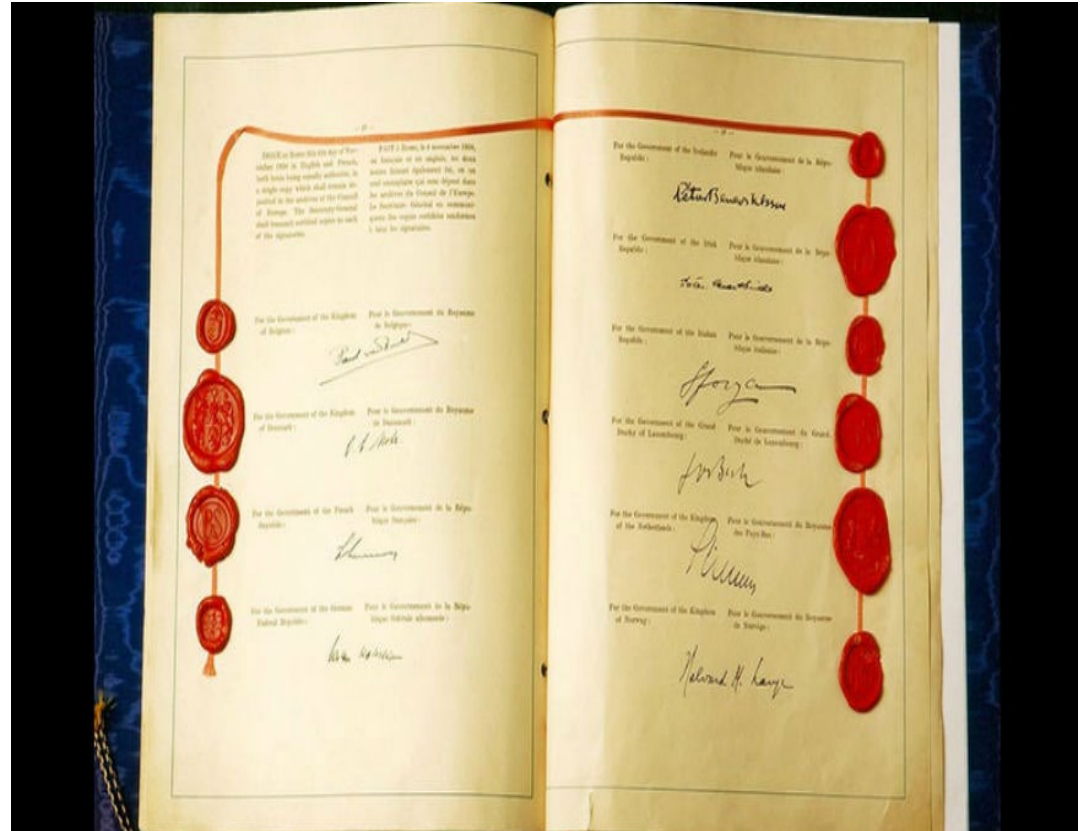
# Field of application of the EU Charter

- **EU Charter Article 51**
- **“The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union [...] and to the Member States only when they are implementing Union law”.**



# European Convention on Human Rights

- Living instrument
- Principle of effectiveness
- Positive obligations
- Principle of proportionality
- Subsidiary protection



# Article 5 ECHR

**1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:**

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- **(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;**
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.



# Pre-trial detention under Article 5 (1) c)

- **'for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence'**
- **'when it is reasonably considered necessary to prevent his committing an offence'**
- **'fleeing after having done so'**



# Pre-trial detention additional guarantees

- **Additional guarantees under Article 5**
  - the right to be brought promptly before a judge
  - the right to be informed promptly,
  - right to challenge the continuation of detention





# Detention conditions

**„the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention”**

European Court of Human Rights (ECtHR), *Kudła v. Poland*, No. 30210/96, 26 October 2000.





## Detention conditions II.

- **Aspects of criminal detention which are crucially related to the dignity of detainees are:**

- the amount of cell space available to detainees;
- hygiene and sanitary conditions;
- availability to be outdoors or spend time outside the cell;
- access to healthcare; and
- protection against violence.



# Detention conditions in EU law

- **Prison conditions are mainly a competence and responsibility of the Member States**
- **EU Charter of Fundamental Rights: Article 4 on the prohibition of torture**
  - Corresponding to Article 3 European Convention on Human Rights,
- **No specific EU legislation, measure or standards regarding detention and detention conditions in the context of criminal law**

# Detention conditions new era of CJEU case law I.

- **Cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru v. Generalstaatsanwaltschaft Bremen*, 5 April 2016**
- **National judicial authorities are under an obligation to**
  - first assess whether or not there is a **real risk of inhuman or degrading treatment** in the issuing Member State
  - if such a risk is identified, judicial authorities must then conduct an **individual assessment** to determine the likelihood of the surrendered person being exposed to such risk.



# Detention conditions new era of CJEU case law II.

## General risk

C-220/18 PPU, *ML*, 25 July 2018.

C-128/18, *Dorobantu*, 15 October 2019

- based on objective, reliable, specific and properly updated on information

## Individual assessment

- whether the risk is real in the particular circumstances of each case, specifically and precisely
- all the relevant physical aspects of detention, should be taken into account
- in the absence of EU minimum standards, ECtHR interpretation in relation to the assessment of detention conditions shall be applied
- assurances must be relied upon save for exceptional circumstances
- the efficacy of judicial cooperation and principles of mutual trust and mutual recognition can not be given precedence



**Thank you!**