

# JUSTICE HUMAN RIGHTS LAW CONFERENCE 2015

EU Charter of Fundamental Rights

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# Application of the Charter to the EU

- EU institutions are obliged to comply with the Charter in all their actions
  - Legislative action
    - Cases C-293/12 etc *Digital Rights Ireland*. Data retention directive incompatible with Arts 7 and 8
  - Management of EU funds
  - External actions
    - Sanctions cases

# When does the Charter apply to Member States?

- Art 51: “*when implementing Union law*”
  - Implementing, eg, a directive
  - Derogating from
    - Case C-390/12 *Pfleger*, 30.4.14 (applying *ERT*)
- In situations that “*fall within the scope of EU law*”

# Within the scope of EU law

- CJEU:

- C-617/10 *Åkerberg Fransson*, 26.2.13
- C-399/11 *Melloni*, 26.2.13
- C-206/13 *Siragusa*, 6.3.14
- C-305/14 *Babasan*, 10.2.15
- C-446/12 *Willems*, 16.4.15

- Domestic case law:

- *R(Zagorski) v SS Business [2010] EWHC 3110 (Admin)*
- *R(Sandiford) v SS Foreign Affairsn [2013] EWCA Civ 581 (went to SCt but not on Charter point)*

# Horizontal application?

- A bold beginning
  - Case C-555/07 *Küçükdeveci*, 19.1.10 (Art 21(1) horizontally applicable but was this because it was also a general principle of law?)
- Rowing back?
  - C-176/12 Association de mediation sociale (Charter right must be “*sufficient in itself to confer on individuals an individual right which they may invoke as such*”)
- *Benkharbouche v Embassy of Sudan* [2015] EWCA Civ 33 (Art 47 horizontally effective)

# Relationship with ECHR

- Art 6(2) TEU: “The Union shall accede to the [ECHR]. Such accession shall not affect the Union’s competences as defined in the Treaties.”
  - Draft accession agreement
  - CJEU Opinion 2/13
- Art 52(3): must be interpreted in conformity with ECHR
- Remedies: *Benkharbouche v Embassy of Sudan*

# A case-study: Dublin Regulation returns

- *MSS v Belgium and Greece* – transfer from Belgium to Greece under Dublin Reg had infringed Art 3 ECHR
- Cases 411 etc/10 *NS v SSHD*, 21 Dec ‘11
  - Duty on M Sts not to return asylum seeker to ‘responsible’ state if there existed “*a systemic deficiency in the asylum procedure and in the reception conditions of asylum seekers*” in the responsible State

# *EM(Eritrea)*

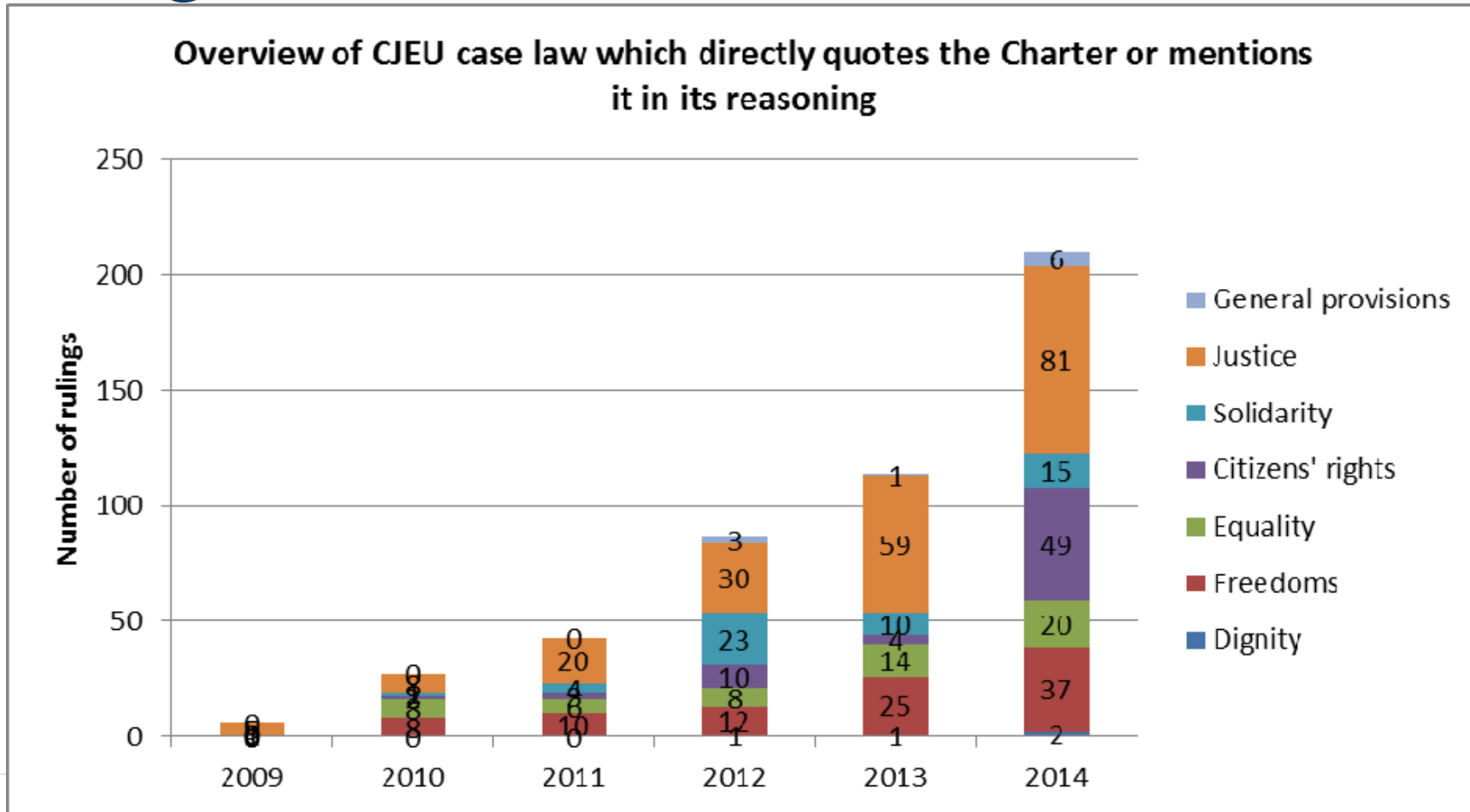
- Is the existence of “*systemic deficiencies*” a necessary requirement
  - Court of Appeal:
    - Yes, because that’s proper interpretation of *NS*;
    - Inconsistent with Strasbourg jurisprudence;
    - But English courts must apply CJEU’s ruling.
  - Supreme Court:
    - No, the CJEU did not elevate ‘systemic deficiencies’ into a necessary requirement. Nothing CJEU said was intended to deviate from the *Soering* test
  - Case C-394/12 *Abdullahi*, 10 Dec ’13, at [62]:



# *Abdullahi*

- *“The only way in which the applicant for asylum can call into question [the jurisdiction of the responsible state] is by pleading systemic deficiencies in the asylum procedure and in the conditions for the reception of applicants for asylum”* in that state.
- Where does that leave us?

# CJEU case law: number of cases citing the Charter



# Recent cases of note

- Art 7: respect for private and family life
  - Joined Cases C-148/13 etc *A, B, C* 2.12.14 (methods by which national authorities may assess credibility of declared sexual orientation of asylum applicants)
- Art 8: protection of personal data
  - *Digital Rights Ireland* (data retention directive invalid)
  - C-131/12 *Google Spain* (google required to remove links to certain personal data)
  - C-212/13 *Rynes* (user of a camera system recording entry to his home held to be a data controller)

# Recent cases (ctd)

- Equality:
  - C-354/13 *Kaltoft* (differential treatment on grounds of obesity can amount to disability discrimination)
  - C-528/13 *Léger* (ban on blood donations by men who had had sexual relations with other men)
- Art 47:
  - C-510/13 *Földgaz Trade*, 19.3.15 (locus standi re decisions of regulatory authorities)
  - C-396/13 *Sähköalojen ammattiliito* (locus standi of trade union)

Thank you

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