

**“THE ROLE OF THE CHARTER OF FUNDAMENTAL RIGHTS OF
THE EUROPEAN UNION IN THE MEMBER STATES”**

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**OPENING ADDRESS BY THE
ATTORNEY GENERAL OF THE REPUBLIC MR. C. CLERIDES**

May I say at first that I am deeply honoured to have been asked to give a short opening address, marking the public lecture of a distinguished jurist, the honourable President of the Court of Justice of the European Union, professor Koen Lenaerts.

According to Article 2 of the Treaty of the European Union:
“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

It is a well known fact that the entry into force of the Treaty of Lisbon in 2009 caused the EU’s Charter of Fundamental Rights

to be given binding effect. According to Article 6 of the Treaty of the European Union as amended by the Lisbon Treaty, the Union recognizes 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 rights, freedoms and principles of 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.

The Charter does not only constitute a list of fundamental rights. It also contains a set of rules, or general provisions, concerning the scope of application of the Charter, and the interpretation of the Charters' fundamental rights that correspond to rights secured by the European Convention on Human Rights, or result from the constitutional traditions common to the Member States.

It must also be noted that according to Article 6(2) of the Treaty of the European Union, the Union is under an obligation to accede the ECHR. An attempt was made towards this aim by means of a Draft Accession Agreement which was finalized in 2013, but the Agreement was found to be unsatisfactory by the European

Court of Justice for the reasons explained by the Court. In spite of that development, however, the ECHR still remains relevant and useful under EU law, both as a source of inspiration of general principles of law, as well as a tool for the interpretation of the rights and principles enunciated in the Charter, at least as far as common, or corresponding rights are concerned.

As it appears from Article 51 of the Charter, and this is quite important, the Charter applies to two different sets of acts: EU acts and national acts, with one limitation, however, as to the latter: The Charter is only applicable to national acts “implementing EU law.” In other words, the Charter is not applicable and it cannot be relied upon in every case in which in a dispute on a national level, a complaint of violation of a fundamental right is raised. If, on the other hand, a member state is thought to have violated any of the Charter rights when implementing EU law, the European Commission can launch infringement proceedings against that state and may ultimately start proceedings before the Court of Justice. In this respect, reference can be made to a rather recent decision of the Grand Chamber of the Supreme of Court of Cyprus in the cases of G. Charalambous and others v. The Republic which was delivered in 2014. Those consolidated cases involved recourses rebutting the legality of pay-cuts of public employees by the government, in the framework of austerity measures taken due to the recent economic

crisis. The Court dealt with a reference and reliance on Article 17 of the Charter which permits restrictions on property rights for reasons of public interest. The following is a passage from the minority judgment which examined this point:

"... The Court of Justice of the European Union still develops the mode of applying the Charter to European Law. The Application of the Charter should not be considered as automatic, and it should not be approached without care. The ECJ in two recent judgments of its Grand Chamber in *Aklagaren v. Hans Akerberg Frasson* C-617/10 dated 26.02.2013 and *Stefano Melloni v Ministerio Fiscal* , C-399/11 dated 26.02.2013 has re-confirmed (in the first case) that: *"... the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by European Union law, but not outside such situations. In this respect, the Court has already observed that it has no power to examine the compatibility with the Charter of national legislation lying outside the scope of European Union law..."* In the second case (Melloni) the Court stated that *"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..."*

It is also worth noting that in the same judgment, the Supreme Court made a reference to an interesting analysis of the issue of the applicability of the Charter, to the EU law, which is contained in a lecture of the Cypriot ex-judge of the ECJ G. Arestis given at the University of Exeter in 2014 under the title "*Fundamental rights in the EU after the treaty of Lisbon: The recent jurisprudence of the Court*".

I must say that I have read the text of the lecture of Mr Arestis and it is admittedly interesting and helpful. It is also worth noting that judge Arestis in his lecture, makes reference, inter alia, to the contents of a presentation on the subject, made by his then colleague Koen Lenaerts.

Therefore, the Supreme Court of Cyprus makes a reference to judge Arestis, judge Arestis makes a reference to judge Lenaerts and all of us here tonight will have the pleasure and honour to listen to judge – President Lenaerts in a few minutes from now.

I will conclude, by referring to the European Commission's Report on the application of the Charter of Fundamental Rights in the EU in 2017 which was adopted in June 2018.

The 2017 Report on the application of the EU Charter of Fundamental Rights highlights that while 2017 was a year of challenges for fundamental rights, the structures and tools in place to make sure the rights of the Charter are a reality, have been functioning. Further support to the respect and promotion of fundamental rights, the rule of law and democracy, including the support for a free and vibrant civil society, will remain central in 2018.

First Vice-President Frans Timmermans said: *"This year we celebrate the 70th anniversary of the UN Universal Declaration on Human Rights. This is a good opportunity to recall that fundamental rights, democracy and the rule of law are the three pillars that are the bedrock of the European Union. Our Charter of fundamental rights is not optional. The EU institutions are bound by it and so are the Member States when implementing EU law. The Court of Justice of the EU and the national courts play an important role to uphold fundamental rights and the rule of law across the Union"*.

Some of the key initiatives promoting fundamental rights in 2017 which are mentioned in the Report include:

- **Further support of democracy and civil society.**

- **Boosting social rights.**
- **Combating discrimination against women.**
- **Protecting children in migration.**
- **Tackling discrimination and combating racism, both offline and online.**
- **Improving access to justice and effective remedies.**

In concluding, we could safely say that the Charter does, in effect, nothing more than what it has aimed at from the very beginning. This, was indeed made clear at the outset. The Charter does not establish new rights, but assembles existing rights that were previously scattered over a range of international sources. It reaffirms the rights as they result from the constitutional traditions and international obligations common to the Member States, the European Convention on Human Rights, the Social charters adopted by the Union and by the Council of Europe, the case law of the Court of Justice of the European Union and of the European Court of Human Rights.

Undoubtedly, the Charter provides a more comprehensive rights protection and it has filled a gap in the internal EU rights policy. It has managed to modernize rights within the Union and it has widened the scope of fundamental freedoms and principles, so as to include, inter alia, social and economic rights which reflect the 21st century.

With these few thoughts and words in mind, we shall be honoured to hear next, the authentic and authoritative view on the matter, by his honour President Kohen Lenaerts.