

# On the importance of the Charter of Fundamental Rights of the European Union

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## Basic question?

- Does the Charter of Fundamental Rights (CFR) **help** ELIANT activists and others **in their efforts for recognition** of applied Anthroposophy in the legal system of the EU and in EU policies?

## Why these efforts?

- Many of the anthroposophic initiatives do not yet have the **chance to profit fully from the advantages of the EU internal market and of EU policies**
- ELIANT's "task is to **secure legal safeguards** for such **initiatives** and to **develop them further** as a contribution towards the further shaping of Europe"

# Outline of my presentation

- Main contents of CFR
- Implementation of CFR by EU institutions and Member States
- Main rights and freedoms concerning all ELIANT members
- Rights and freedoms related to specific sectors
  1. Agriculture and nutrition
  2. Education
  3. Medicine and health
- Conclusions

# Main contents of CFR

- CFR enshrined in Lisbon Treaty, Art. 6 TEU („constituional rank“) Six titles:
- Dignity, Art. 1-5 Human dignity is inviolable
- Freedoms, Art. 6 -19 e.g. freedom of sciences
- Equality, Art. 20 – 26 everyone is equal before the law
- Solidarity, Art. 27 – 38 e.g. workers rights
- Citizens‘ Rights, Art. 39 – 46 e.g. right to vote
- Justice, Art. 47 -50 effective remedy and fair trial
  
- Not all articles grant **individual rights**, some fix only objectives such as Art. 37, environment protection, and 38, consumer protection

# Main contents of CFR

## Titel VII general Rules

- **Legally binding for EU institutions**

and Member States when they are implementing Union law.

- **The Charter only applies to the extent that the Union has powers to act**

- - **Art. 52: limitations of rights and freedoms by institutions possible, but**

- must be provided for by law
- must be proportional
- must meet objectives of general interest
- must respect the essence of rights and freedoms

# Implementation of CFR by EU institutions

- Rights and freedoms are taken into account at any step of the legislative process
- Strategy for effective implementation set out in three Commission documents 2010, 2011, 2015
- Similar documents in Parliament and Council
- Jurisprudence of European Court of Justice
- Annual reports on the application of the Charter by the Commission and the Fundamental Rights Agency
- Annual colloquia, e.g. 2015: combating anti-Semitic and anti-Muslim hatred in Europe
- Legislation adopted before CFR came into force can also be checked

# Main rights and freedoms concerning all ELIANT members

- **Art. 1: Human dignity**
- Art. 2: Right to life
- Art. 13: Freedom of Arts and sciences
- Art. 15: Freedom to choose an occupation
- Art. 16: Freedom to conduct a business
- **Art. 20: Equality before the law**
- Art. 22: Cultural, religious and linguistic diversity
- Different rights and freedoms have to be seen as complementary and interdependent according to circumstances

## Agriculture and Nutrition

example: artificial vitamin fortification  
of biodynamic baby food

- Commission Directive 2006/125/EC provides for an extremely **high mandatory level of vitamin B1** in cereal based baby food
- **Producers** of such food originating from **organic farming** are **forced to add artificial vitamin B** to reach the minimum level
- But the business of these producers is based on the **fact that their products are natural without additives**
- **These products** contain a sufficient amount of vitamin B1  
—
- The consumer expects to buy such a product

## Nutrition example: artificial vitamin fortification of biodynamic baby food II

- The producers claim claim for an **exemption** from the artificial vitamin fortification could be **based on Art. 16 CFR: freedom to conduct a business**
- They could argue that the limitation of that freedom introduced by **Directive 2006/125/EC** does not meet the **requirements of Art. 52 §1 CFR**:
  - provided for by law,
  - general interest,
  - proportionality
- Related argument: **Art 20 CFR, Equality**: organic farming is different from non-organic: **different issues must be treated differently**

# Education

## The example of digital skills |

- The Subject is part of the “**New Skills Agenda for Europe**” launched by the Commission in June
- ECSWE together with ECNAIS and EFFE will have to make their **input to the debate on digital skills in due time**
- **Their concern is:** the actions in the agenda are mainly driven by economic arguments and requests of the labour market. **Too little emphasis is put on age-appropriate IT and media curricula for children in schools**

## \_The example of digital skills

II

- Arguments in this respect could be build on
  - **Article 14 CFR**: the **variety of pedagogical convictions** has to be respected
  - And **Article 24**: **children** have the right to such protection and care as is necessary for their **well-being**.
- The **CFR** is not only **relevant** in the areas where the EU has law making power but **also in fields like education** where the EU acts mainly by promotion through **financial contributions, coordination** of Member State's actions and **recommendations** (see Art. 165 Treaty on the Functioning of the EU)

## Medicine and health

Example: **access to the European market** for anthroposophic medicinal products (AMP) |

- **The Community code** relating to medicinal products for human use (Directive 2001/83/EC as amended) **is inadequate** for registration and marketing authorisation of AMP
- **Some special rules** for homeopathic or herbal products exist but **are insufficient**
- **Result:** many AMP are **excluded** from the **Internal market**, some have access under insufficient and costly conditions

# Medicine and health

## access to the European market for AMP II

- Request of ELIANT and its members: adapted procedures specifically facilitating marketing authorizations for all AMP
- Difficulties: Commission reluctant to make new proposals, EP and Member States reluctant to discuss them.
- Why? Most involved politicians and public authorities are advised by experts of the so called “evidence based” medicine
- whereas the methods of anthroposophic medicine (AM) are different: we call them “cognition based” or “integrated” medicine

## Access to the European market for AMP III

- Most national legislations ask for “evidence based” proof that a medicinal product fulfils the requirements of quality, safety and efficacy. The EU Code follows this line with few exemptions mentioned above
- Yet, “evidence based” proof does not fit for AMP. “Cognition based” proof should also be admitted on EU level like it is the case e.g. in Germany.
- In the German Constitution the “Grundrechte” are very strong. So “freedom of sciences” has contributed to the neutrality of the State with respect to different methods of therapy.

# Access to the European market for AMP IV

- Other “Grundrechte” helped to recognise AM in the German legal system:
  - Freedom to exercise a profession = freedom of therapy for doctors
  - Freedom of self-determination of persons = autonomy for patients
- **These 3 freedoms are also enshrined in CFR**
  - Freedom of Science Art. 13,
  - profession (business) Art. 15 and 16 for doctors
  - self-determination Art. 1 combined with Art. 3 §2(a) for patients
- Art. 15 and 16 CFR also apply to the owners of companies producing AMP

## Access to the European market for AMP V

- **German law courts** have developed the principle of “Binnenanerkennung” (**internal recognition**) which applies to special methods of therapy like AM.
- This principle means that **doctors using a special therapy** and their associations **decide on the validity of the therapy**.
- An indication of that internal recognition would be that a **certain number of doctors and patients** have applied that therapy **for a certain time**.

# Access to the European market for AMP VI

- If these requirements are fulfilled there is a **constitutional obligation** for the public authorities to provide for adequate legal solutions
- So that therapists, patients and pharmacists of the special therapy may enjoy their fundamental rights.
- As the CFR corresponds to the German “Grundrechte” the **same consideration applies on EU level**
- **It follows: CFR obliges EU institutions** to adopt **adequate legislation** for AM and for access of AMP on the European internal market.

# Access to the European market for AMP VII

- Adequate legislation on **safety and efficacy of AMP** has to respect in particular **two principles of Art. 52 CFR**
  - **Proportionality**
  - **The essence of FR**
- An additional argument could be based on **Art. 20 CFR, equality**: “**cognition based**” medicine is different from “**evidence based**” medicine and has to be treated differently.

# Conclusions

- The answer on my basic question is “yes”
- The three examples show that
  - ELIANT and its members could **base their demands** on European legislation and policies **on the CFR** with a good chance for success,
  - however, in each case **a more detailed legal argumentation** has to be elaborated,
  - these conclusions are valid for most of the demands contained in **ELIANT's Memorandum of 2011** which has been submitted to the Commission with the support of **one million signatures**,
  - the success of ELIANT will be to the **advantage of European citizens' freedom of choice**.

# References

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