

# Editorial

## Happy 10th anniversary of the Charter!

With the adoption of the Treaty of Lisbon on 1 December 2009 the EU Charter of Fundamental Rights came into direct effect. This year we will therefore be celebrating its 10th anniversary! Of course, the Charter is older than 10 years, although it didn't have direct effect at that time. And having direct effect matters. The importance of the Charter has grown over the years. Whereas the Court of Justice of the European Union (CJEU) referred to the Charter in 27 cases in 2010, this number reached 356 in 2018 according to the 2018 report on the application of the EU Charter of Fundamental Rights.

The importance of fundamental rights is very visible in employment law. Almost all cases of this magazine involve fundamental rights, including equal treatment, whistleblowing and holidays. As a practicing lawyer, I sometimes find it challenging to work with fundamental rights. They have the tendency to clash with other – sometimes also fundamental – rights and interests. The approach that national courts may take in balancing these rights and interests may very well differ with the approach the CJEU would take applying the Charter, and quite often we also need to take note of the approach of the European Court of Human Rights when interpreting the European Convention on Human Rights (ECHR). I leave sources like ILO obligations out of this equation.

The Charter aims at 'harmonising' its content with the content of the ECHR, whilst also taking a favourability approach (Article 52.3): "*In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection*". Still, reconciling the Charter and the ECHR can be complex at times, as the contribution 'Eweida versus Achbita: a storm in a teacup?' shows. Moreover,

the Charter has a sometimes impressive reach. I'm not sure whether I would have guessed that the right to an allowance in lieu of annual leave not taken upon termination of the employment relationship would be considered a fundamental right, as explained by the CJEU in the *Bauer* case (C-569/16). But perhaps this betrays a very conservative Dutch view on holiday rights.

All the more reason that I'm so happy with all the different cases from different Member States: it broadens the horizon and makes you think beyond the borders of your own Member State. Let us all broaden our horizons and enjoy this magazine.

Zef Even, editor