

Prof. Dr. Claudia Schubert

On the conflict between the Member States' obligations according to EU law and the Council of Europe's guarantees of human rights

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Be caught between two stools –
Collective bargaining and collective action as
fundamental rights in a multi-level legal system

The *Laval* Decision - an Epilogue

- **Lex Laval**, 15 April 2010



- Collective complaint filed by
Landsorganisationen i Sverige (LO) and
Tjänstemännens Centralorganisationen (TCO)

- **European Committee of Social Rights**
3 July 2013, no. 85/2012

→ violation of Article 6 § 2 and 6 § 4 RESC (13:1)

- **Neutral (!) Resolution of the Committee of Ministers**
5 February 2014

Human Rights Protection and the Principle of International State Cooperation

European Court of Human Rights (GC)

Bosphorus Hava Yollari Turizm ve ticaret anonim Şirketi v. Ireland

no. 45036/98

State actions taken in compliance with legal obligations under EU law, but interfering with individual property rights, can be justified under the condition that the relevant provisions of EU law guarantee fundamental rights, that can be considered **equivalent** to those provided by the ECHR and mechanisms to control their observance



~~identical~~ / comparable

- higher requirements contradict the international state cooperation
- rebuttable presumption

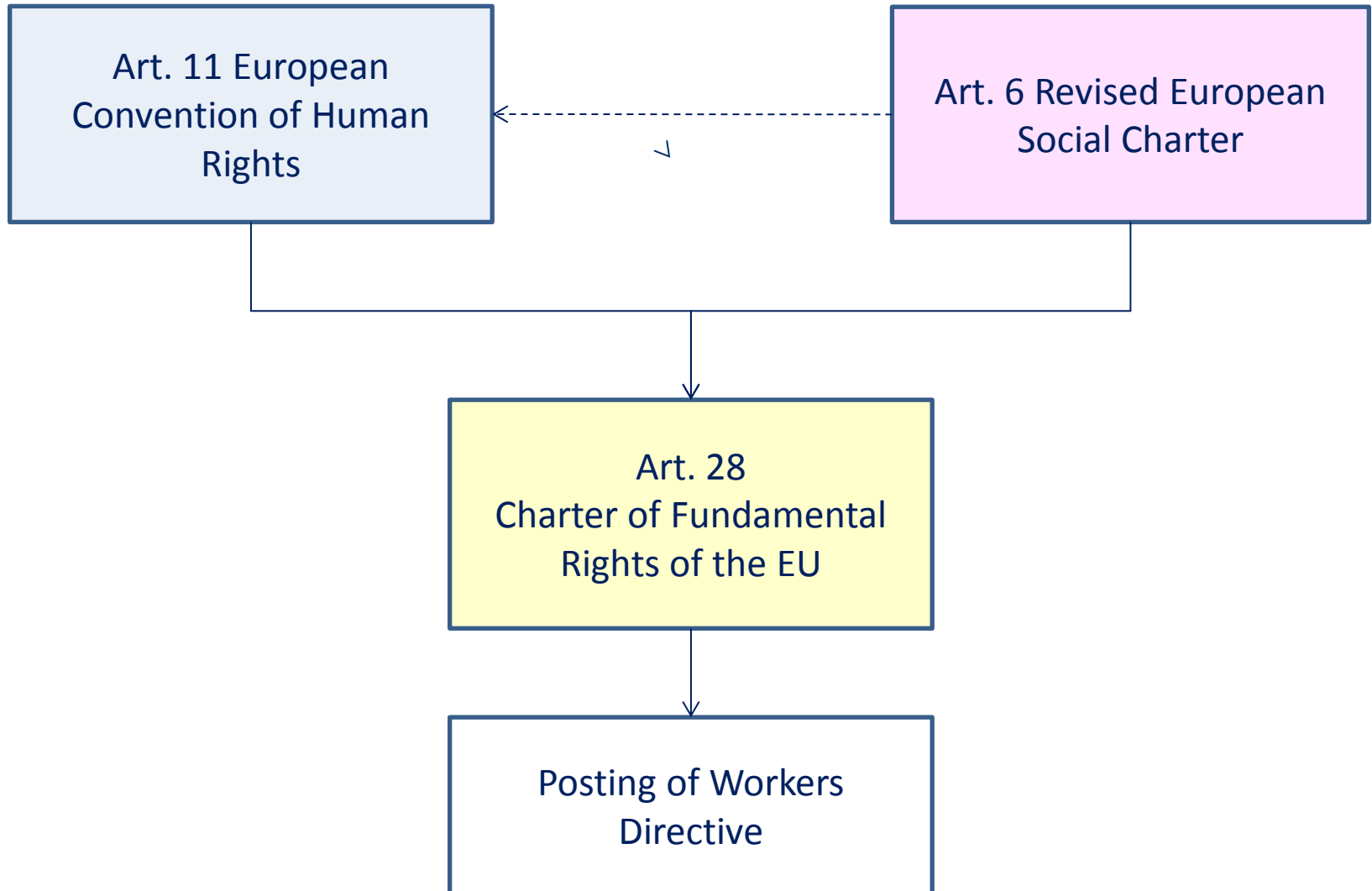
Human Rights Protection and the Principle of International State Cooperation

Practice of the European Committee of Social Rights (case 85/2012)



- no detailed comparison of the protection of the rights to collective bargaining and collective action under RESC and EU law
- current status of social rights in the EU cannot justify a general presumption of conformity of legal acts and rules of the EU with the RESC

Protection of collective bargaining and collective action in the EU



Human Rights Protection and the Principle of International State Cooperation

Violation of Article 6 § 2 and Article 6 § 4 RESC

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- no obligation for foreign companies to have a branch office
 - limitation of collective bargaining and action to minimum working standards
 - duty to compensate for any loss due to unlawful collective action

Sweden's reaction to the conflict

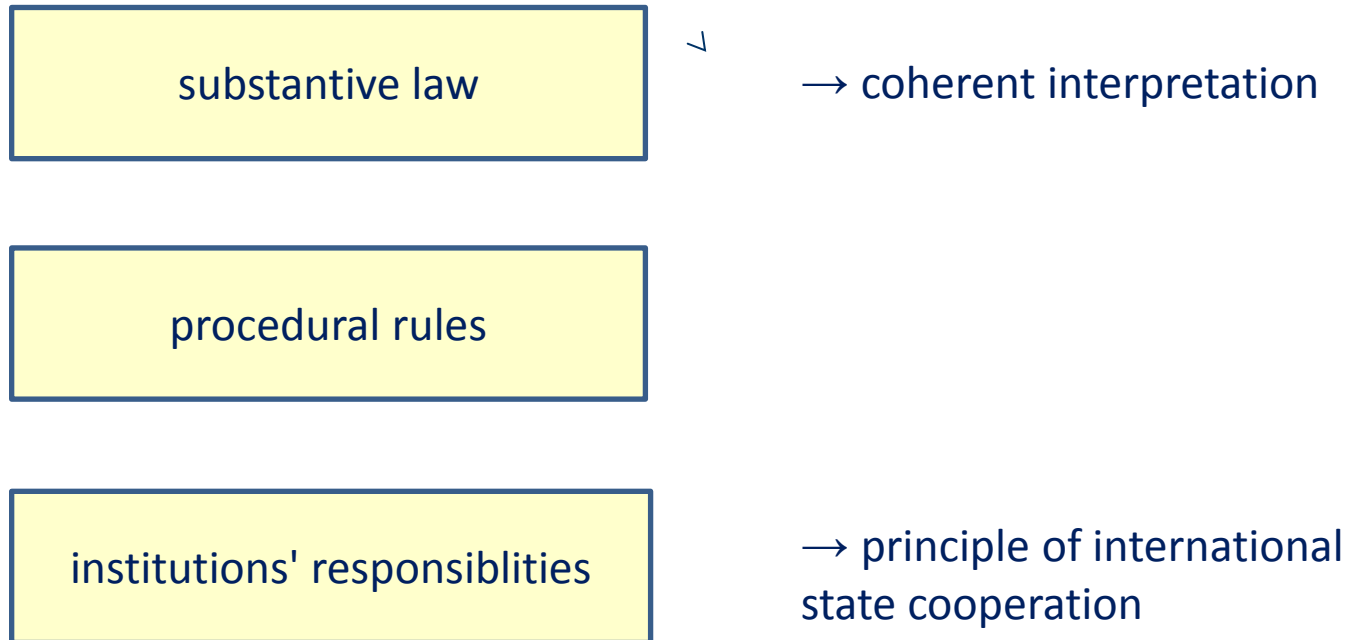
→ after inquiry of Lex Laval: draft statute, September 2015



- employer must appoint an authorised representative on trade union's request
- collective bargaining and collective action only for minimum working conditions according to Swedish sectoral agreement
- general applicability of minimum working conditions in collective agreements
- supervisory power of trade unions

Summary

Fundamental rights in a multi-level legal system - Levels of harmonisation



Summary

regulation unnecessary to Implement a directive
but on the occasion of its implementation
and infringing a fundamental right

