



EU Law & European System of Human Rights Protection 2016

EU Charter, free movement & citizenship



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Link between EU Single Market & Fundamental Rights

- I. EU Single Market law as a source (of inspiration) for the development of FR
- II. EU Single Market law strengthening FR
- III. EU Single Market law as a barrier to FR



II. EU Single Market strengthening Fundamental Rights (a)

- A specific amplification of the EU Charter
 - ✓ Case C-233/12, Gardella: para. 39 '[...] Article 15(2) of the Charter reiterates inter alia the free movement of workers guaranteed by Article 45 TFEU [...]'.
 - ✓ Case C-367/12, Sokoll-Seebacher: para. 22 '[...] Article 16 of the Charter refers, inter alia, to Article 49 TFEU, which guarantees the fundamental freedom of establishment.'
 - ✓ Case C-390/12, Pflieger: para. 57 'National legislation that is restrictive from the point of view of Article 56 TFEU, such as that at issue in the main proceedings, is also capable of limiting the freedom to choose an occupation, the freedom to conduct a business and the right to property enshrined in Articles 15 to 17 of the Charter.'



II. EU Single Market strengthening Fundamental Rights (b)

➤ Exceptions interpreted in the light of fundamental rights

• **Case C-260/89, ERT**

“In particular, where a Member State relies on the combined provisions of Articles 56 and 66 in order to justify rules which are likely to obstruct the exercise of the freedom to provide services, such justification, provided for by Community law, must be interpreted in the light of the general principles of law and in particular of fundamental rights. Thus the national rules in question can fall under the exceptions [...] only if they are compatible with the fundamental rights the observance of which is ensured by the Court.”

• **Case C-390/12, Pfleger**

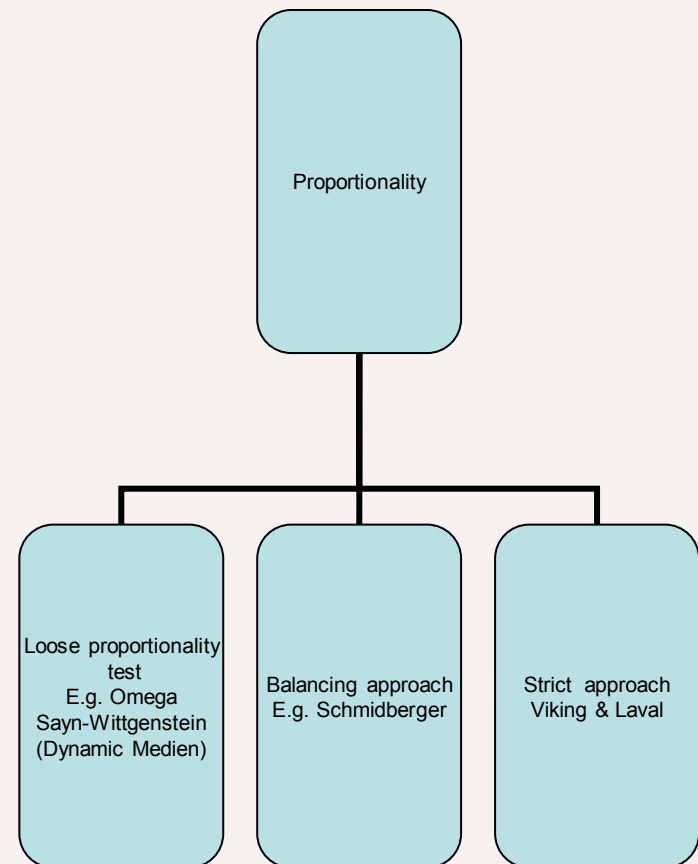
“As follows from that case-law, where it is apparent that national legislation is such as to obstruct the exercise of one or more fundamental freedoms guaranteed by the Treaty, it may benefit from the exceptions provided for by EU law in order to justify that fact only in so far as that complies with the fundamental rights enforced by the Court. That obligation to comply with fundamental rights manifestly comes within the scope of EU law and, consequently, within that of the Charter. ”





III. EU Single Market as a barrier to FR → Exceptions to free movement

- Point of departure → Fundamental rights do not escape from application of free movement rules
 - Important consequence → shift burden of proof
- ECJ uses different techniques to resolve conflicting interests





Possible impact of the EU Charter

- CJEU: Taking proper account of fundamental rights in **balancing**
- CJEU: interpreting EU legislation in the light of the Charter (Case C-131/12, Google Spain)
- EU legislator → forced to take fundamental rights more seriously → Joined Cases C-293/12 & C-594/12, Digital Rights Ireland & Case C-362/14, Schrems (see hereafter)
 - Particularly in fields like data protection & privacy, but what about citizenship rights in general?



Widening & deepening EU Single Market

- **Area of Freedom, Security & Justice**

- Article 67(1) TFEU → "The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States."



- ✓ **Freedom**

- ◆ Persons, including TCNs → common migration policy?

- ✓ **Security**

- ◆ Cooperation between police and judicial authorities & harmonisation of criminal laws

- ✓ **Justice**

- ◆ Mutual recognition of judicial and extra-judicial matters in civil disputes

- **Economic & Monetary Union**



European citizenship



BEUCITIZEN
BARRIERS TOWARDS EU CITIZENSHIP



What is EU citizenship?

- **Article 20(1) TFEU**
 - Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship
- **CJEU (case law)**
 - Citizenship of the Union is intended to be the fundamental status of nationals of the Member States





Citizenship rights (I)

- Legal Framework (Legislation & Treaty)
 - First: Three Directives of 1990's: limited in scope
 - Since April 2006: Directive 2004/38 on the free movement of persons (broad personal scope: economically active and non-active Union citizens and TCN)
 - Specific citizenship rights in the TFEU and the Charter on Fundamental rights



Citizenship rights (II)

- **Articles 18 to 24 TFEU**
 - The right to move and reside freely
 - Electoral rights: equal treatment EP and ME
 - (Equal) diplomatic protection in TC
 - Petition to EP and Ombudsman
 - New: citizens' initiative: 1 million citizens from a significant amount of MS
 - ✓ <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing>



EU citizenship rights (III)

- Multiple sources of fundamental rights
 - Article 6 TEU
 - EU Charter
 - General principles of EU law
 - ECHR/International law
 - national constitutions
 - specific national and EU legislation
 - Par. 2: The EU shall accede to the ECHR....
- Beyond market citizenship?



EU Citizenship & Fundamental Rights (I)

- Limited scope of the EU Charter
 - Article 51(1) Charter → Åkerberg-Fransson and beyond
 - Link with free movement: derogations and restrictions to free movement
- The right to reside (Article 20 TFEU)?



EU Citizenship & Fundamental Rights (II)

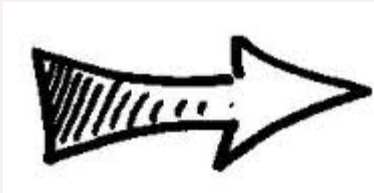
- **Link with free movement**
 - E.g. Case 60/00, Carpenter
 - Article 21 TFEU & Directive 2004/38
 - ...BUT... Case C-333/13, Dano
- **Link with Article 20 TFEU**
 - Rottmann, Ruiz Zambrano....
 - Von Bogdandy: Article 2 TEU and Article 20 TFEU
 - Commission: Rule of Law procedure: Article 7 TEU



EU Citizenship & Right to Family Life (I)



EU Citizenship & Right to Family Life (II)



Case C-135/08, Rottmann: 'It is clear that the situation of a citizen of the Union who is faced with a decision withdrawing his naturalisation (...) in a position capable of causing him to lose the status conferred by Article 20 TFEU and the rights attaching thereto falls, **by reason of its nature and its consequences**, within the ambit of European Union law.'

EU Citizenship & Right to Family Life (III)



Case C-34/09, Ruiz Zambrano: Zambrano's have the Colombian nationality live with their two children having the Belgian nationality in Belgium. They are threatened to be expelled. Do you think EU citizenship would be able to help/of added value to the family?



EU Citizenship & Right to Family Life (IV)



Case C-34/09, Ruiz Zambrano: 'Article 20 TFEU precludes national measures which have the effect of depriving citizens of the Union of the **genuine enjoyment of the substance of the rights** conferred by virtue of their status as citizens of the Union'



EU Citizenship & Right to Family Life (V)



Case C-256/11, Dereci 'Effectiveness of Union citizenship'

'the criterion relating to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of European Union citizen status refers to situations in which the Union citizen has, in fact, to leave not only the territory of the Member State of which he is a national but also the territory of the Union as a whole.'



EU Citizenship & Right to Family Life (VI)

- National (Dutch) case law
 - Article 20 TFEU – mixed family: one Dutch parent → Strict interpretation!
 - ◆ the Dutch parent is (partly) unable to take care of the children: fosterhome
 - ◆ Dutch parent mentally ill
 - ◆ **Exceptional circumstances accepted**
 - ✓ Test: de facto forced to leave the territory of the European Union
- Questions Dutch court in Case C-133/15, Chavez-Vilchez (pending – Opinion AG)



The EMU & Fundamental Rights

- Are reforms to national labour law required by the Troika (EU, ECB, IMF) for states in receipt of a bail-out compatible with fundamental, social rights (Barnard)?
 - ✓ Unfortunately the questions referred in *Sindicatos dos Bancários do Norte* do not explicitly make the link between reforms required by the troika and the changes to Portuguese labour law (public sector pay cuts)
 - ✓ Does the EU Charter apply?
 - ✓ If so, how could reforms of the labour market be challenged?
 - ✓ Difficult exercise for the ECJ → perhaps a procedural approach?



Towards a more general right for the protection of EU citizens' fundamental rights in the EU (I)?

- Point of departure → three layers of protection
 - National level
 - ECHR level
 - EU level
- CJEU in the case of Dereci

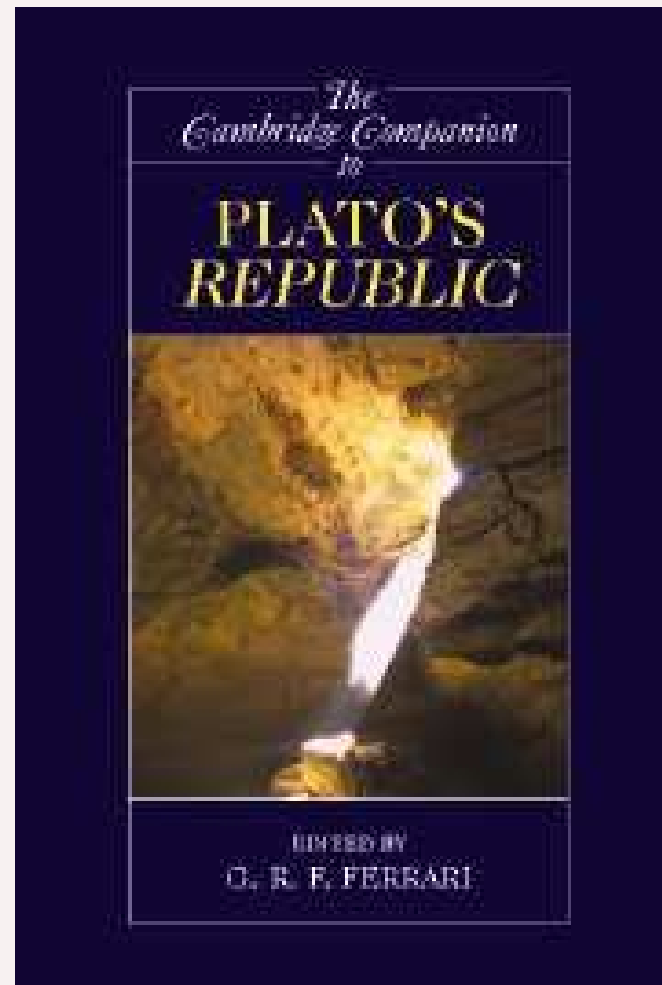
“if the referring court considers (...) that the situation of the applicants in the main proceedings is covered by European Union law, it must examine (...) the right to respect for private and family life provided for in **Article 7 of the Charter**. On the other hand, if it takes the view that that situation is not covered by European Union law, it must undertake that examination **in the light of Article 8(1) of the ECHR.**”



Towards a more general right for the protection of EU citizens' fundamental rights in the EU (II)?



- Composite citizenship (Van Eijken, 2014)
- Composed of different entitlements – responsibilities of authorities & Fundamental rights protection
- Challenge (I): limited scope of the EU Charter
- Challenge (II): serious and systematic breach of fundamental rights (Article 7 TEU, Article 2 TEU and Article 20 TFEU)





Thank you for your attention!

