

Book Review: *Research Handbook on EU Law and Human Rights*, Sionaidh Douglas-Scott, Nicholas Hatzis (eds) (Edward Elgar Publishing, 2017, ISBN 9781782546399)

If one should describe this book in one sentence, it might be appropriate to say that it is an edited book comprising numerous articles dealing with the position of human rights within European Union law. Yet, the sentence still says very little about the book, as the answer to that question is far from clear and one dimensional. Today, given the binding nature of the Charter, introduced by the Lisbon Treaty, the number of questions related to the notion of fundamental rights within the EU is growing even larger. What is the scope of the application of the Charter of Fundamental Rights of the European Union? What is the purpose of the Charter? What about its relationship with the European Convention on Human Rights and Fundamental Freedoms? What does EU citizenship entail? These are only some of the various questions that the essays in this book attempt to tackle and shed light on.

The book consists of 23 contributions divided into three parts ('The Framework', 'Beyond the European Union', and 'EU Action and New Directions in Fundamental Rights') following opening remarks provided by the editors, Sionaidh Douglas-Scott and Nicholas Hatzis. In the introduction, the editors briefly introduce the acceptance of human rights in EU law, starting from the rather indifferent approach taken by the European Court of Justice in the *Stork* case¹ and ending with the Charter of Fundamental Rights of the European Union. They further prepare the stage for the issues that are thoroughly considered in the articles that make up the volume, some of which are analysed in more detail below.

Starting with the first part, as the title of the chapter 'Framework' rightly suggests, the book starts with a series of articles on the evolution of the position of fundamental rights within the EU. In this respect, Stijn Smismans argues in the opening piece that the notion of fundamental rights within the European Union is not something new. Although the EU started as the European Economic Community where the original treaty did not include any reference to fundamental rights and where integration was primarily economic and functional, he argues they were still present as a 'political myth of the EU' in the sense that the European Communities were based on the idea to 'ensure peace and avoid repetition of the experience of the two world wars'. Smismans interestingly adds that currently there are four existing, concurrent narratives of fundamental rights which have gradually developed over time

¹ Case 1/58 *Stork v High Authority* ECLI:EU:C:1959:4.

– legal, constitutionalising, the social rights narrative, and the external relations narrative. He argues that they all make ‘foundational claims on the nature of the European polity’. In this respect, for example, the legal narrative started with the *Stauder* case² where the Court of Justice, although previously taking a different view, stated that ‘fundamental rights are “enshrined in the general principles of Community law and protected by the Court”’ while the constitutionalising one relies on the ‘explicit inclusion of fundamental rights as foundational principles in the constitutional texts of the EU and strategic use of constitutional references by the political institutions to increase support for European-polity building’. But, most importantly, Smismans questions the current discrepancy between the myth of fundamental rights (entailed in those narratives and legal provisions) and current policy actions taken by the EU, such as the idea of ‘Fortress Europe’ despite the ‘increased constitutionalisation of fundamental rights in the EU over the last decade’. This idea of discrepancy between what is being claimed and what really exists is also explored by other contributions in this book. Massimo Fichera in his article ‘EU fundamental rights and the European Arrest Warrant’, critically explores the relationship between security-orientated measures within the Area of Freedom, Security and Justice on the one hand, and human rights on the other, while James Fraczyk in his essay ‘EU fundamental rights and the financial crisis’ openly criticises the position taken by the Court of Justice of the European Union by stating that ‘the story of EU fundamental rights in the context of financial crisis has been disheartening’ as the Court completely rejected examining the human rights dimension when it comes to austerity measures to tackle the financial crisis.

Further, several contributions deal with questions relating to the Charter of Fundamental Rights of the European Union (hereinafter: Charter). After the Lisbon Treaty entered into force in 2009, the Charter has had binding force on the basis of article 6(3) of the Treaty of European Union (TEU). However, taking into consideration the existing case law such as *Internationale Handelsgesellschaft*³ where it was stated that ‘respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice’ as well as article 51(2) of the Charter which stipulates that the Charter shall not extend in any way the competences of the Union as defined in the Treaties, the question remains how the Charter has actually contributed to the existing mechanism. One aspect of this notion is discussed by Angela Ward in ‘Remedies under the EU Charter of Fundamental Rights’, where she explicitly concludes after analysing the judicial enforceability of human rights in

² Case 29/69 *Erich Stauder v City of Ulm – Sozialamt* ECLI:EU:C:1969:57.

³ Case C-11/70 *Internationale Handelsgesellschaft* ECLI:EU:C:1970:114.

the EU that ‘it would be a mistake to view the elevation of the Charter of Fundamental Rights to the status of a legally binding instrument as creating any kind of revolution in the judicial enforceability of EU fundamental rights’. The other notion with respect to the Charter that is rightly addressed by the contributors of this book is the question of whether the Charter could be an appropriate tool for widening the competences of the EU, even though there seem to be explicit limits contained in article 51(2) of the Charter and article 6(1)(2) TEU. The issue is assessed to a certain degree in contributions by Angela Ward, Allison Young or Steven Peers, to name but a few. However, the most thorough analysis of the question of competences seems to be that provided by Sybe de Vries in ‘The Charter of Fundamental Rights and the EU’s “creeping” competences: does the Charter have a centrifugal effect for fundamental rights in the EU?’ The essay provides an interesting and elaborate view on the lack of clarity of the limits of EU competences when it comes to questions of fundamental rights, or, as the author calls it, the ‘trigger and creep’ process. The author compares the activist approach taken by the Court of Justice (in *Kücükdeveci*⁴ and *Mangold*⁵) through general principles of law with the substantially cautious approach reflected in the often technical reasoning of the judgments. Naturally, the essays do not, nor can they, provide a definitive answer to numerous questions regarding the scope of application of the Charter, or certain provisions of the Charter, but their value is that they most certainly recognise the questions and the problems (eg the horizontal direct effect of the Charter provisions, the differences between principles and rights), all of which are of strong political relevance and are yet to be determined.

With the question of competences, a further area of research naturally arises which is the relationship between the Member States and the European Union in terms of human rights. One aspect of this notion is analysed by Michal Bobek in ‘Fundamental rights and fundamental values in the old and new Europe’. As has already been established, the notion of human rights is not purely European. Human rights have been recognised not only by international treaties but also by long-standing national constitutions. This notion is interestingly analysed in this article about different understandings of human rights in ‘old’ and ‘new’ Europe, primarily influenced by different historical and cultural backgrounds. Through three case studies conducted with respect to secret laws, data retention and privacy, and general economic freedom, he argues that in states with recent experience of a totalitarian regime where the level of trust in government and institutions is lower, there is greater desire for stronger human rights protection.

⁴ Case C-555/07 *Kücükdeveci (Seda)* ECLI:EU:C:2010:21.

⁵ Case C-144/04 *Mangold v Rüdiger Helm* ECLI:EU:C:2005:709.

Finally, when speaking of fundamental freedoms, it seems inevitable to include an article dealing with the idea of EU citizenship, proclaimed as the fundamental status of nationals of the Member States. This book contains a compelling essay by Niamh Nic Shuibhne where she comprehensively analyses the link between citizenship and fundamental rights, predominantly in light of the right to move and reside which the Charter has recognised as a fundamental right. The author poses the question about whether the very fact that the Charter has recognised the right to move and reside as a fundamental right has added anything new. And what about fundamental rights protection when there is no movement?

To conclude, this book on EU law and human rights provides a comprehensive analysis of the position of human rights within European Union law, gathering as it does numerous contributions by acclaimed judges, practitioners and scholars who possess immense knowledge on the matter. This review has merely identified several issues of great interest to this reviewer since it would be impossible to adequately address every issue and essay contained in this book. As Bobek stated in his paper, 'human rights are interpretative, value laden, indeterminate notions'. Such indeterminacy naturally raises a vast number of questions, especially in today's era of digital technology, expanding markets and also security concerns. This book, due to its wide application in different areas of law (internal market, migration, competition law, environmental law, etc), might therefore be interesting and useful reading not only for lawyers specialising in human rights law, but for numerous others, both scholars and practitioners, who encounter the human rights dimension when dealing with other matters, sometimes even predominantly commercial ones.

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