

Kerikmäe, T. et al.: Protecting Human Rights in the EU. Controversies and Challenges of the Charter of Fundamental Rights, New York, Springer, 2014, 195 p.

A recently published book, edited by Tanel Kerikmäe, professor at Tallinn Law School, contributes to the ongoing debate on the role that human rights play in the EU legal order, and specifically on effects brought about by the Charter of Fundamental Rights (hereinafter referred to as “Charter”). It is not meant to provide an exhaustive analysis of this extensive area; it rather presents several topics, both general and very specific, chosen by 13 authors of the individual book’s chapters. Most of the authors are associated with the Tallinn Law School, but some do also come from other Baltic countries (Lithuania) and from Central Europe (Austria, Czech Republic). Hence, the authors’ experience stems from legal systems which are discussed less frequently on the European level, thus providing a novel point of view to topics discussed more frequently in “bigger” jurisdictions.

In most of the contributions, the authors strive to reconcile the jurisprudence of the European Court of Human Rights (hereinafter referred to as “ECtHR”) and the Court of Justice of the European Union (hereinafter referred to as “CJEU”), as professor Kerikmäe observes in his opening chapter. He also identifies another recurrent theme present in most of the articles – the discussion has only started and the CJEU’s case law will need more time to settle down. As he puts it, “*whether the Charter will open a new era in the development of the EU [...] remains unclear. Future practice [...] will provide more answers*”. A third theme, running through most of the contributions, draws our attention to the fact that human rights have started to play a significant role in areas traditionally associated “only” with economic arguments, such as the free movement of persons or competition law.

The first chapter, written by Tanel Kerikmäe himself, outlines the basic characteristics of the Charter and its place in the EU legal order, including its ambition to “*establish a dialogue between national and supranational levels*”; he also opens debate on horizontal effects of the Charter, i. e. to what extent an individual may invoke rights contained therein against another individual.

The following chapter, carved by Katrin Nyman-Metcalf, tries to evaluate whether the rights contained in the Charter are truly of universal nature, or whether they should be discussed contextually, taking into account the specific traditions and peculiarities of individual countries in which they are to be applied. She concludes that currently, the trends in the perception of human rights speak in favour of universality and that “*the EU and the Charter may lead by example and provide new understanding of [fundamental] rights*”.

These rather theoretical opening chapters of the book are complemented by an article of Ondrej Hamulák with a provocative title “Idolatry of Rights and Freedoms”, concerned with the role the Charter played in the process of constitutionalization of the EU; he highlights the importance of fundamental rights being enshrined in the EU legal order, concluding that “*fundamental rights’ protection played [...] crucial role as the autopoietic argument [...] accompanying the evolution of independent supranational legal order and its constitutionality*”.

The rest of the chapters are concerned with specific, narrowly defined topics, illustrating how the discourse in these fields was altered by adoption of the Charter. Procedural rights are frequently being discussed, as in the Edita Gruodytė and Stefan Kirchner’s article on the right to legal aid or Marco Botta and Alexandr Svetlicini’s deliberations on fair trial guarantees in competition law enforcement. It is interesting that despite the wording of the Charter, we cannot expect any relevant change concerning the right to legal aid (“*the contribution of the Charter [...] is less than spectacular*”, as the article concludes). On the other hand, concerning the judicial review of competition enforcement decisions, even though the wording of the Charter delimiting the right to fair trial does not bring anything fundamentally new, there might be differences in jurisprudence of CJEU and ECtHR which may make the CJEU reconsider its previous case law; however, “*the potential diverging views between the courts in Luxembourg and Strasbourg will be clarified only when the EU accedes to the ECHR*”.

Arguments based on fundamental rights, both procedural and substantive, are not uncommon in other areas under discussion, as in the Lehte Root’s chapter on asylum, Katrin Nyman-Metcalf, Pawan Kumar Dutt and Archil Chochia’s discussion of interplay between competition and intellectual property law or Kristi Joamet’s analysis of marriage impediments in the context of free movement; these contribution not only summarise the current case law, but attempt to appraise its future trajectory as well.

In other areas, recourse to fundamental rights has so far been rather limited and the contributions contained in this book open new horizons for discussion, since these topics have so far been discussed mostly in the context of free movement of persons, as is the case with Katarina Pijletlovic’s article on fundamental rights of athletes or Kari Käsper’s discussion of free movement of students.

The individual chapters are well balanced, both by extent and style, and the choice of topics is illuminating. The whole book is thus both coherent and comprehensive, which is unfortunately often not the case with similar compilations. Overall, the book brings new insights into the place of fundamental

rights within the EU legal order and its possible future developments, and is sure to find its place among other publications on this topic.

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