

Preface

The protection of the individual by Fundamental Rights is the main subject of modern constitutional law. In Europe, various protection instruments exist, national constitutions, the European Convention of Human Rights (ECHR) and, for the Member States of the European Union, the EU Fundamental Rights Charter. These guarantees are legally autonomous but functionally interdependent and even interactive. The strongest influence seems to be exercised by the jurisprudence of the European Court of Human Rights on the interpretation of the national constitutional texts as well as on the EU Charter. The accession of the EU to the ECHR will strengthen this process.

It is a noteworthy phenomenon that the protection of the individual is progressively intensified and courts interpret the scope of civil rights in a broad sense. Substantive and functional efficiency is a requirement that flows from the anthropocentric approach of modern European constitutionalism. Fundamental rights constitute a comprehensive order of values to be interpreted in a way which gives efficient protection to the individual. Even if there is no explicit right, the judges, in particular the constitutional judges, have the obligation to complement the text by interpretation. Functional effectiveness means in particular that the legislator is prevented from restricting fundamental rights without limitation. Modern constitutionalism requires the legislator to observe the principle of proportionality as well as to respect the very essence of the right.

A further important phenomenon of European constitutionalism is that fundamental rights become increasingly convergent. Jurisprudence on the various levels of protection take notice of the understandings of other courts and compare the own approach to them. The Strasbourg Court takes a leading role in this convergence process.

This book tries to analyse various aspects of this process. The first contribution (*Rainer Arnold/Eva Feldbaum*) reflects on the phenomenon of convergence of fundamental rights in Europe and makes reference in this context to Germany, United Kingdom and France.

The second contribution considers human dignity as the ideological and legal basis of all fundamental rights (*Antonio-Carlos Pereira Menaut/Maria Carolina Pereira-Sáez*).

The Spanish Constitution expressly requires that the interpretation of the national fundamental rights has to adapt to the international jurisprudence, in particular to that of the Strasbourg Court. Thus the Constitution opens itself towards an Europeanization of their own provisions which is significantly reflected by the constitutional jurisprudence. Europeanization implies fundamental rights convergence to an important extent (*Pedro Julio Tenorio Sánchez*).

The Italian jurisprudence on Fundamental Rights is also particularly significant for the multilevel context in which rights are interpreted. *Luca Mezzetti* presents a comprehensive analysis of this phenomenon.

How the principle of equality and non-discrimination has been functionally enlarged by influences of supranational concepts is examined in the study of *María Cristina Hermida del Llano*.

The Nordic countries' approach to Fundamental Rights under the influence of the ECHR is subject of the contribution of *Joakim Nergelius*.

The Constitutions of the New Democracies take fundamental rights seriously. Manifest expression is the Europe-oriented constitutional jurisprudence analysed for Poland by *Bogusław Banaszak* and for Romania by *Bianca Selejan-Guțan*.

Turkey's Fundamental Rights approach is largely examined by *Selin Esen* and *Merih Öden*.

The international influences on the Fundamental Rights provisions of the new Constitution of Kosovo and the instruments of protection before the Constitutional Court are intensely studied by *Arbëresha Raça Shala*.

The rights protection on the level of the European Union itself is the concluding subject which is treated generally in a contribution by *Viktor Muraviov* and *Olena Sviatun*, and in a specific study on Article 36 of the EU Fundamental Rights Charter by *Jiří Zemánek*.

Regensburg, Germany
May 2015

Rainer Arnold



<http://www.springer.com/978-94-017-7463-5>

The Convergence of the Fundamental Rights Protection
in Europe

Arnold, R. (Ed.)

2016, XIII, 235 p. 6 illus., Hardcover

ISBN: 978-94-017-7463-5